
Delaware Register of Regulations

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Volume 19 - Issue 12, Pages 1036 - 1111



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Emergency
Proposed
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Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before May 16, 2016.

Cover Photo by Dolores Michels:
*Daisies at Browns Branch
County Park*

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

The *Delaware Register of Regulations* is an official State publication established by authority of 69 *Del. Laws*, c. 107 and is published on the first of each month throughout the year.

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The *Register* will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The *Delaware Register of Regulations* is cited by volume, issue, page number and date. An example would be:

16 **DE Reg.** 1227 - 1230 (06/01/13)

Refers to Volume 16, pages 1227 - 1130 of the *Delaware Register* issued on June 1, 2013.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 17	4:30 p.m.

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The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the *Register* in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

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1000 Board of Pilot Commissioners.....	19 DE Reg. 913 (Prop.)
1100 Board of Dentistry and Dental Hygiene.....	19 DE Reg. 724 (Prop.)
Section 10.0, Practical (Clinical) Examination.....	19 DE Reg. 431 (Final)
1400 Board of Electrical Examiners.....	19 DE Reg. 141 (Final)
1725 Polysomnography Advisory Council.....	19 DE Reg. 69 (Final) 19 DE Reg. 184 (Prop.) 19 DE Reg. 780 (Final)
1770 Respiratory Care Practice Advisory Council.....	19 DE Reg. 914 (Prop.)
1795 Midwifery Advisory Council.....	19 DE Reg.1001 (Prop.)
1799 Genetic Counselor Advisory Council.....	19 DE Reg. 725 (Prop.)

CUMULATIVE TABLES

1900 Board of Nursing, Sections 2.0, 3.0, 4.0, 5.0 & 9.0.....	19 DE Reg. 125 (Prop.)
2000 Board of Occupational Therapy Practice.....	19 DE Reg. 432 (Final)
2100 Board of Examiners in Optometry.....	19 DE Reg. 276 (Prop.)
Section 9.0 Telehealth.....	19 DE Reg. 26 (Prop.)
2500 Board of Pharmacy.....	19 DE Reg. 204 (Final)
subsection 3.8.....	19 DE Reg. 914 (Prop.)
Section 5.0.....	19 DE Reg. 26 (Prop.)
Sections 5.0 and 10.0.....	19 DE Reg. 125 (Prop.)
2700 Board of Registration for Professional Land Surveyors.....	19 DE Reg. 660 (Final)
2925 Real Estate Commission Education Committee.....	19 DE Reg. 860 (Final)
2930 Council on Real Estate Appraisers.....	19 DE Reg. 282 (Prop.)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	19 DE Reg. 661 (Final)
3300 Board of Veterinary Medicine.....	19 DE Reg. 142 (Final)
3500 Board of Examiners of Psychologists.....	19 DE Reg. 589 (Prop.)
3600 Board of Geologists.....	19 DE Reg. 727 (Prop.)
3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers.....	19 DE Reg. 1028 (Final)
3800 Board of Dietetics/Nutrition.....	19 DE Reg. 70 (Final)
3900 Board of Clinical Social Work Examiners.....	19 DE Reg. 592 (Prop.)
4100 Board of Home Inspectors, Sections 4.0, 9.0 and 10.0.....	19 DE Reg. 283 (Prop.)
5200 Board of Examiners of Nursing Home Administrators, Section 5.0, Programs for Continuing Education Credits.....	19 DE Reg. 592 (Prop.)
Uniform Controlled Substances Act Regulations.....	19 DE Reg. 663 (Final)
	19 DE Reg. 932 (Final)
	19 DE Reg. 827 (Prop.)
	19 DE Reg. 1002 (Prop.)
	19 DE Reg. 319 (Final)
	19 DE Reg. 827 (Prop.)
	19 DE Reg. 284 (Prop.)
	19 DE Reg. 27 (Prop.)
	19 DE Reg. 933 (Final)
	19 DE Reg. 1003 (Prop.)
	19 DE Reg. 184 (Prop.)
	19 DE Reg. 664 (Final)
	19 DE Reg. 479 (Prop.)
	19 DE Reg. 27 (Prop.)
	19 DE Reg. 834 (Prop.)
	19 DE Reg. 1003 (Prop.)
Public Service Commission	
1202 Policies and Procedures Regarding FOIA Requests.....	19 DE Reg. 434 (Final)
3001 Rules for Certification and Regulation of Electric Suppliers (Docket No. 49)	19 DE Reg. 595 (Prop.)
3007 Electric Service Reliability and Quality Standards.....	19 DE Reg. 126 (Prop.)
4002 Regulations Governing Payphone Service Providers in Delaware (Docket No. 12), Repeal of.....	19 DE Reg. 71 (Final)

DEPARTMENT OF TRANSPORTATION

Division of Maintenance and Operations

2601 Outdoor Advertising.....	19 DE Reg. 728 (Prop.)
	19 DE Reg. 1029 (Final)

Division of Motor Vehicles

2222 School Bus Driver Qualifications and Endorsements.....	19 DE Reg. 597 (Prop.)
	19 DE Reg. 936 (Final)
2225 Delaware Driving Privilege Permit and Driving Privilege Card.....	19 DE Reg. 603 (Prop.)
	19 DE Reg. 937 (Final)
2261 Changing of License Plate Numbers and Establishing a Fee for Such Change.....	19 DE Reg. 527 (Final)

2266 Vehicle Document Fees.....	19 DE Reg. 836 (Prop.)
2289 Transportation Network Companies.....	19 DE Reg. 1030 (Final)
Division of Planning and Policy	19 DE Reg. 731 (Prop.)
2309 Development Coordination Manual.....	19 DE Reg. 73 (Final)
	19 DE Reg. 322 (Final)
	19 DE Reg. 737 (Prop.)
	19 DE Reg. 938 (Final)
Division of Transportation Solutions	
2401 Utilities Manual Regulations.....	19 DE Reg. 612 (Prop.)
2402 Delaware Manual in Uniform Traffic Control Devices.....	19 DE Reg. 76 (Final)
2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual.....	19 DE Reg. 134 (Prop.)
	19 DE Reg. 324 (Final)
Office of the Secretary	
Pedestrian Accessibility Standards.....	19 DE Reg. 480 (Prop.)
EXECUTIVE DEPARTMENT	
Office of Management and Budget	
Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act.....	19 DE Reg. 289 (Prop.)
	19 DE Reg. 528 (Final)
Division of Facilities Management	
4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.....	19 DE Reg. 207 (Final)
Statewide Benefits Office	
2007 Disability Insurance Program Rules and Regulations.....	19 DE Reg. 78 (Final)

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Emergency Regulations

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

§ 10119. Emergency regulations.

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 **Delaware Code**, Section 122(3) (16 **Del.C.** §122(3))

16 **DE Admin. Code** 4202

ORDER**4202 Control of Communicable and Other Disease Conditions****NATURE OF THE PROCEEDINGS:**

This emergency regulation is being promulgated to ensure the timely and complete reporting of Zika Disease. This emergency regulation adoption is necessary to ensure that reporting requirements are updated in time to capture information related to Zika illness during the summer mosquito season. As awareness of the disease and its potential impact increases, Delaware must take steps to monitor and prepare for occurrences in Delaware. The revisions to the 4202 Control of Communicable Diseases and Other Conditions will ensure that all information needed to monitor Zika illness in Delaware is captured. This emergency regulation adoption is necessary while the proposed rulemaking process is being completed to ensure the timely reporting of information related to Zika illness. Delaware Health and Social Services ("Department") / Division of Public Health has determined that a compelling public interest exists to amend these regulations without prior notice or hearing.

NATURE OF PROPOSED AMENDMENT:

The proposed provides notice to the public that the Division of Public Health (DPH) intends to amend the existing 4202 Control of Communicable and Other Disease Conditions to allow for timely and complete reporting of information relevant to Zika illness in Delaware.

SUMMARY OF THE PROPOSED AMENDMENT:

The existing 4202 Control of Communicable and Other Disease Conditions does not adequately provide for the reporting of information related to Zika illness. The current regulations are being revised to allow for more complete reporting requirements of information relevant to Zika illness. The change will allow for a broader definition of information that must be reported, which will help ensure complete information pertinent to Zika illness is received. The collection of this information will allow Delaware to better monitor the status of Zika in Delaware and develop any needed actions or recommendations in response.

FINDINGS OF FACT:

The Department finds that a compelling public interest exists which necessitates promulgation of an emergency regulation and requests emergency approval of these rule amendments to revise the reportable disease requirements. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, to assure timely reporting of information related to Zika illness that revisions to the 4202 Control of Communicable and Other Disease Conditions be adopted on an emergency basis without prior notice or hearing.

Rita M. Landgraf, Secretary, DHSS
May 24, 2016

4202 Control of Communicable and Other Disease Conditions
(Break in Continuity of Sections)

2.0 Conditions to be Reported, Timeliness and Manner of Reporting
(Break in Continuity Within Section)

2.2 Timeliness and Content of Notifiable Disease Reports

(Break in Continuity Within Section)

2.2.2 Except as otherwise provided by these regulations, reports of notifiable or other diseases or conditions required to be reported by these regulations shall contain sufficient information to contact the person reporting. When available, the following information shall be reported: the name, address, telephone number, date of birth, race, ethnicity, gender, and disease of the person ill or infected, the date of onset of illness; the name, address, and telephone number of the person's health care provider; and any pertinent ~~laboratory~~ medical information, including but not limited to laboratory information, diagnostic information or other information relevant to the reportable condition.

(Break in Continuity of Sections)

7.0 Control of Specific ~~Contagious~~ Diseases

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

4202 Control of Communicable and Other Disease Conditions

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE****Notice of Proposed Rulemaking and Public Hearing****Proposed Amendments to the Rules of Practice and Procedure Concerning Regulatory Program Fees and to the Basin Regulations - Water Supply Charges Concerning Rates**

Summary: The Commission will hold a public hearing to receive comments on proposed amendments to the Rules of Practice and Procedure to adopt a new project review fee structure and to the Basin Regulations - Water Supply Charges to provide for automatic inflation adjustments.

Dates: The public hearing will be held at 1:00 P.M. on Wednesday, July 27, 2016. The hearing will continue until all those wishing to testify have had an opportunity to do so. Written comments will be accepted and must be received by 5:00 P.M. on Friday, August 12, 2016.

Addresses: The public hearing will be held at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please use the driving directions posted on the Commission's website.

Oral Testimony and Written Comments: Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at 609-883-9500, ext. 224. Written comments may be submitted as follows: If by email, to paula.schmitt@drbc.state.nj.us; if by fax, to Commission Secretary at 609-883-9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; and if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. Comments also may be delivered by hand at any time during the Commission's regular office hours (Monday through Friday, 8:30 A.M. through 5:00 P.M. except on national holidays) until the close of the comment period at 5:00 P.M. on Friday, August 12, 2016. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and "Fees Rulemaking" in the subject line.

For Further Information, Contact: An FAQ document explaining this proposal in further detail is available on the

Commission's website, www.drbc.net. For queries about the rulemaking process, please contact Pamela Bush at 609-477-7203.

Supplementary Information:

Background. The Delaware River Basin Commission ("DRBC" or "Commission") is a federal interstate compact agency charged with managing the water resources of the Delaware River Basin on a regional basis without regard to political boundaries. Its members are the governors of the four basin states - Delaware, New Jersey, New York and Pennsylvania - and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government. The Commission is not subject to the requirements of the Delaware Administrative Procedure Act. This notice is published by the Commission for information purposes.

DRBC is proposing a comprehensive revision of its project review fee structure, including an automatic annual indexed inflation adjustment for most fees. The inflation adjustment is also proposed for DRBC's water supply charges rates applicable to consumptive and non-consumptive surface water withdrawals.

Current fees. DRBC's current project review fee structure was adopted by the Commission in 2009 by (uncodified) Resolution No. 2009-2. For projects involving total costs of \$250,000 or less, it consists of a flat project review fee of \$1,000 for privately sponsored projects and \$500 for publicly sponsored projects. For projects with total costs greater than \$250,000, DRBC's current project review fee is based upon a percentage of the costs of the project attributable to project components physically located within the basin, and is capped at \$75,000. However, projects for which the review is exceptionally involved may be charged DRBC's actual costs, which may exceed \$75,000. The current fee structure generates an uneven revenue stream that produced average annual revenues of \$610,843 for the years 2011 through 2015. The Commission's total cost associated with project reviews required by the Delaware River Basin Compact and DRBC regulations is estimated to equal \$1.15 million annually. This estimate takes into consideration administrative cost savings expected to accompany implementation of the One Process/One Permit Program (also "One Process/One Permit"), recently authorized by the Commission through its adoption of the one permit program rule, 18 CFR 401.42.

DRBC's water supply charges are used to pay debt service, annual operation and maintenance costs, and the costs of required improvements, repairs and replacements associated with water supply storage owned by the Commission in two reservoirs - Blue Marsh and Beltzville - located in Pennsylvania and operated by the U.S. Army Corps of Engineers. Water supply charges revenues also support DRBC activities related to water supply planning and operations. DRBC's current water supply charges rates, in effect since January 1, 2011, are \$80 per million gallons for consumptive use and \$0.80 per million gallons for non-consumptive use. The previous rates, \$60 per million gallons for consumptive use and \$0.60 per million gallons for non-consumptive use, were adopted in 1978 and remained unchanged for more than 30 years. DRBC's water supply charges revenues have lagged significantly behind inflation.

Proposed changes. The proposed project review fee restructuring includes: for wastewater discharge projects, elimination of DRBC project review fees for applications that undergo coordinated review pursuant to the One Process/One Permit Program; and for water withdrawal projects, (1) for those projects for which DRBC continues to act as lead review agency, replacement of the current fee structure with fees based on monthly water allocation limits; and (2) for renewals subject to coordinated review under One Process/One Permit, elimination of the project review fee. DRBC is simultaneously proposing an Annual Monitoring and Coordination Fee for all water withdrawal and wastewater discharge projects subject to DRBC review and approval, including projects that receive permits from a signatory party agency under the One Process/One Permit Program. The annual fee will range from \$300 to \$1,000 per year, depending upon the permitted discharge capacity or monthly water allocation. The fee for DRBC's review of "Other" projects - those that involve no ongoing withdrawals or discharges - will continue to be calculated on the basis of project cost. The Annual Monitoring and Coordination Fee will not apply to such "Other" projects. In instances where the Commission's activities and related costs associated with the review of an existing or proposed project are expected to involve extraordinary time and expense, the Executive Director will continue under the proposed rule to have the discretion to impose an Alternative Review Fee equal to the Commission's actual costs. Finally, an annual, indexed, automatic inflation adjustment is proposed for most project review fees.

The proposed regulatory program fees structure is expected to provide a more predictable and sustainable source of revenues and to help close the annual gap in funding needed to support DRBC's project review program.

No increase is proposed to DRBC's current water supply charges rates, set forth at 18 CFR 420.41. However, an annual, indexed, automatic inflation adjustment is proposed, applicable to both the consumptive and non-consumptive use rates for surface water withdrawals.

Additional information. An FAQ document explaining DRBC's fee restructuring proposal in greater detail is available on the Commission's website, www.drbc.net.

For the reasons set forth in the preamble, the Delaware River Basin Commission proposes to amend parts 401 and 420 of title 18 of the Code of Federal Regulations as follows:

Part 401 - Rules of Practice and Procedure, is proposed to be amended by the addition of a new § 401.43 to read as follows:

§ 401.43 Regulatory program fees.

(a) *Purpose.* The purpose of this section is to provide an adequate, stable and reliable stream of revenue to cover the cost of the Commission's regulatory program activities, an important means by which the Commission coordinates management of the shared water resources of the Basin. Activities to be covered by the fees include the review of applications for projects that are subject to review under the *Delaware River Basin Compact* and implementing regulations; and ongoing activities associated with such projects, including but not limited to, effluent and ambient monitoring, data analysis, hydrodynamic and water quality modeling, and coordination with state and federal agencies.

(b) *Types of fees.* The following types of fees are established by this section:

(1) *Docket Application Fee.* Except as set forth in paragraph (b)(1)(iii) of this section, the Docket Application Fee shall apply to:

(i) Any project that, in accordance with the *Delaware River Basin Compact* and DRBC regulations, requires a Commission-issued docket or permit, whether it be a new or existing project for which the Commission has not yet issued an approval or a project for which the renewal of a previous Commission approval is required.

(ii) Any project that in accordance with section 11 or section 13.1 of the *Delaware River Basin Compact* and DRBC regulations must be added to the Comprehensive Plan (also, "Plan"). In addition to any new project required to be included in the Plan, such projects include existing projects that in accordance with section 13.1 of the *Compact* are required to be included in the Plan and which were not previously added to the Plan. Any existing project that is changed substantially from the project as described in the Plan shall be deemed to be a new and different project for purposes of this section.

(iii) *Exemptions.* The Docket Application Fee shall not apply to:

(A) Any project for which the Signatory Party Agency serves as lead under the one permit program rule (§ 401.42), unless such project must be added by the Commission to the Comprehensive Plan.

(B) Any project for which an agency, authority or commission of a signatory to the *Compact* is the primary sponsor. Projects sponsored by political subdivisions of the signatory states shall not be included in this exemption. For purposes of this section "political subdivisions" shall include without limitation municipalities, municipal utility authorities, municipal development corporations, and all other entities not directly under the budgetary and administrative control of the Commission's members.

(2) *Annual Monitoring and Coordination Fee.* An Annual Monitoring and Coordination Fee shall apply to each withdrawal and/or discharge project for which a water allocation or wastewater discharge approval issued pursuant to the *Compact* and implementing regulations is in effect, regardless of whether the approval was issued by the Commission in the form of a docket, permit or other instrument, or by a Signatory Party Agency under the one permit program rule (§ 401.42). The fee shall be based on the amount of a project's approved monthly water allocation and/or approved daily discharge capacity.

(3) *Alternative Review Fee.* In instances where the Commission's activities and related costs associated with the review of an existing or proposed project are expected to involve extraordinary time and expense, an Alternative Review Fee equal to the Commission's actual costs may be imposed. The Executive Director shall inform the project sponsor in writing when the Alternative Review Fee is to be applied and may require advance payment in the amount of the Commission's projected costs. Instances in which the Alternative Review Fee may apply include, but are not limited to, matters in which:

(i) DRBC staff perform a detailed pre-application review, including but not limited to the performance or review of modeling and/or analysis to identify target limits for wastewater discharges;

(ii) DRBC staff perform or review complex modeling in connection with the design of a wastewater discharge diffuser system;

(iii) DRBC manages a public process for which the degree of public involvement results in extraordinary effort and expense, including but not limited to costs associated with multiple stakeholder meetings,

special public hearings, and/or voluminous public comment.

(iv) DRBC conducts or is required to engage third parties to conduct additional analyses or evaluations of a project in response to a court order.

(4) *Additional fees.*

(i) *Emergency approval.* A request for an emergency certificate under § 401.40 to waive or amend a docket condition shall be subject to a minimum fee in accordance with paragraph (e) of this section. An Alternative Review Fee also may be charged in accordance with paragraph (b)(3) of this section.

(ii) *Late filed renewal application.* Any renewal application submitted fewer than 120 calendar days in advance of the expiration date or after such other date specified in the docket or permit or letter of the Executive Director for filing a renewal application shall be subject to a Late Filed Renewal Application charge in excess of the otherwise applicable fee.

(iii) *Modification of a DRBC approval.* Following Commission action on a project, each project revision or modification that the Executive Director deems substantial shall require an additional Docket Application Fee calculated in accordance with paragraph (e) of this section and subject to an Alternative Review Fee in accordance with paragraph (b)(3) of this section.

(iv) *Name change.* Each project with a docket or permit issued by the DRBC or by a Signatory Party Agency pursuant to the one permit program rule (§ 401.42) will be charged an administrative fee as set forth in paragraph (e) of this section.

(v) *Change of ownership.* Each project that undergoes a "change in ownership" as that term is defined in section 5.2.1 E.2 of the Commission's Water Supply Charges Regulations will be charged an administrative fee as set forth in paragraph (e) of this section.

(c) *Indexed adjustment.* On July 1 of every year, beginning July 1, 2017, all fees established by this section will increase commensurate with any increase in the annual April 12-month Consumer Price Index (CPI) for Philadelphia, published by the U.S. Bureau of Labor Statistics during that year.¹ In any year in which the April 12-month CPI for Philadelphia declines or shows no change, the Docket Application Fee and Annual Monitoring and Coordination Fee will remain unchanged. Following any indexed adjustment made under this paragraph, a revised fee schedule will be posted on the Commission's website. Interested parties may also obtain the current fee schedule by contacting the Commission directly during business hours.

¹ Consumer Price Index – U / Series ID: CWURA102SA0 / Not Seasonally Adjusted / Area: Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD / Item: All items / Base Period: 1982-84=100.

(d) *Late payment charge.* When any fee established by this section remains unpaid 30 calendar days after the payment due date provided on the Commission's invoice, an incremental charge equal to 2% of the amount owed shall be automatically assessed. Such charge shall be assessed every 30 days thereafter until the total amount owed, including any late payment charges, has been paid in full.

(e) *Fee schedules.* The fees described in this section shall be as follows.

DOCKET APPLICATION FILING FEE

<u>Project Type</u>	<u>Docket Application Fee</u>	<u>Fee Maximum</u>
Water Withdrawal	\$400 per million gallons/month of allocation ¹ , not to exceed \$15,000 ¹ . Fee is doubled for any portion to be exported from the basin.	Greater of: \$15,000 ¹ or Alternative Review Fee
Wastewater Discharge	Private projects: \$1,000 ¹ Public projects: \$500 ¹	Alternative Review Fee

PROPOSED REGULATIONS

Other	0.4% of project cost up to \$10,000,000 plus 0.12% of project cost above \$10,000,000 (if applicable), not to exceed \$75,000 ¹	Greater of: \$75,000 ¹ or Alternative Review Fee
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¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

ANNUAL MONITORING AND COORDINATION FEE

	<u>Annual Fee</u>	<u>Allocation</u>
Water Withdrawal	\$300 ¹	< 4.99 mgm
	\$450 ¹	5.00 to 49.99 mgm
	\$650 ¹	50.00 to 499.99 mgm
	\$825 ¹	500.00 to 9,999.99 mgm
	\$1,000 ¹	> or = to 10,000 mgm
	<u>Annual Fee</u>	<u>Discharge Design Capacity</u>
Wastewater Discharge	\$300 ¹	< 0.05 mgd
	\$610 ¹	0.05 to 1 mgd
	\$820 ¹	1 to 10 mgd
	\$1,000 ¹	>10 mgd

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

ADDITIONAL FEES

<u>Proposed Action</u>	<u>Fee</u>	<u>Fee Maximum</u>
Emergency Approval Under 18 CFR 401.40	\$5,000	Alternative Review Fee
Late Filed Renewal Surcharge	\$2,000	--
Modification of a DRBC Approval	At Executive Director's discretion, Docket Application Fee for the appropriate project type.	Alternative Review Fee
Name change	\$1,000 ¹	--
Change of Ownership	\$1,500 ¹	--

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

Part 420 - Basin Regulations - Water Supply Charges is proposed to be amended by revising § 420.41 to read

as follows:

§ 420.41 Schedule of water charges.

The schedule of water charges established in accordance with § 420.22 shall be as follows:

- (a) \$80 per million gallons for consumptive use, subject to paragraph (c) of this section; and
- (b) \$0.80 per million gallons for non-consumptive use, subject to paragraph (c) of this section.
- (c) On July 1 of every year, beginning July 1, 2017, the rates established by this section will increase commensurate with any increase in the annual April 12-month Consumer Price Index (CPI) for Philadelphia, published by the U.S. Bureau of Labor Statistics during that year.¹ In any year in which the April 12-month CPI for Philadelphia declines or shows no change, the water charges rates will remain unchanged. Following any indexed adjustment made under this paragraph, revised consumptive and non-consumptive use rates will be posted on the Commission's website. Interested parties may also obtain the current rates by contacting the Commission directly during business hours.

¹ Consumer Price Index – U / Series ID: CWURA102SA0 / Not Seasonally Adjusted / Area: Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD / Item: All items / Base Period: 1982-84=100.

Dated: May 6, 2016

PAMELA M. BUSH
Commission Secretary

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings

A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education intends to create 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings. This regulation is being created pursuant to 14 **Del.C.** §122(b)(26) to provide uniform procedures for alternative placement meetings and expulsion hearings.

This regulation was published for public comment on December 1, 2015 with comments being received from the Attorney General Matt Denn, the ACLU Foundation of Delaware, Representative Kimberly Williams, the Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities and various school district personnel. One comment specifically required the removal of 10.4.1.2 in its entirety, as per the Administrative Procedures Act, school districts are not required to receive written exceptions, comments or arguments relative to expulsion decisions. This is a substantive change which required the regulation to be republished.

Additionally, several comments received were found to warrant changes and those changes were made to this republished proposed regulation. In general they are: (1) Corrected definition of Parent to include a student age 18 or older, (2) Clarified definition of and added Appropriate Educational Services where pertinent, (3) Clarified definition of Expulsion to include "any other Delaware public school", (4) Added language in Grievance definition to note that the Grievance Guidelines will be posted on the DOE website, (5) Clarified definition of Student Review to

include student and parent participation, as well as alignment with individual goals and expectations, (6) Clarified the principal's authority for removing student from general student population as part of the Preliminary Discipline Investigation and relative to due process delay provisions, (7) Noted reasonable efforts would be made to include the allegedly offending student with regard to the student interview, (8) Clarified timeframe ("as soon as practicable") regarding when confiscated contraband shall be turned over to police, (9) Strengthened language throughout regulation regarding notification of various meetings/hearings relative to specific timetables, persons involved, and multiple methods of notification, (10) Added language relative to the Individualized Service Plan where warranted, (11) Relative to student conference, added language that there shall be one other person present at the conference or the conference shall be audio recorded, (12) Referenced student placement eligibility in a Consortium Discipline Alternative Program and associated services, and (13) Other minor word, numbering and grammatical changes as needed.

There were also several comments received and considered that for various reasons did not warrant changes be made to the proposed regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 7, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulations' website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation will help improve student achievement as measured against state achievement standards as it provides uniform procedures for alternative placement meetings and expulsion hearings.
2. Will the amended regulation help ensure that all students receive an equitable education? The regulation will help to ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation will help to protect a student's due process rights, but does not address students' health and safety specifically.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation will help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation further clarifies decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the regulation.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? State or local school boards may need to contract with hearing officers to conduct expulsion hearings or revise current district policies and processes which may require legal review/costs.

*Please Note:

(1) **The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2016/proposed/19 DE Reg 1057RFA 06-01-16.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

PUBLIC NOTICE

Long-Term Care Facilities - Eligibility Determinations and Post-Eligibility Treatment; Undue Hardships

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance proposes to amend the Delaware Social Services Manual (DSSM) by modifying provisions regarding long-term care eligibility, specifically, *to modify language regarding undue hardship provisions to align with current federal regulations and DMMA policy.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Kimberly Xavier by email at Kimberly.Xavier@state.de.us; by mail at Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, or by fax to 302-255-4425 by July 1, 2016. Please identify in the subject line: Long-Term Care - Undue Hardship Provision.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) by modifying provisions regarding long-term care eligibility, specifically, *to modify language regarding undue hardship provisions to align with current federal regulations and DMMA policy.*

Statutory Authority

- §1902(17)(c) of the Social Securities Act, *Reasonable evaluation of income and resources*
- §1912(a)(1)(A) of the Social Security Act, *Assignment of rights of payments*
- §1917 of the Social Security Act, *Liens, Adjustments and Recoveries, and Transfers of Assets*
- §1924(a)(3)(b) of the Social Security Act, *Methodology and standards for determining and evaluating income and resources for institutionalized spouses*
- §1924(c)(3)(c) of the Social Security Act, *Assignment of support rights*
- 42 CFR 435.602(c), *Financial responsibility of relatives and other individuals*

Background

Section 1902(a)(18) of the Act states that a state plan for medical insurance must comply with the provisions of §1917 of the Act with respect to liens, adjustments, and recoveries of medical assistance correctly paid, transfers of assets, and treatment of certain trusts.

The Delaware Department of Health and Social Services (DHSS), in order to comply with Section 1917 of the Social Security Act as amended by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), has established policies and procedures for treating the transfer of assets and trusts in eligibility determinations and post-eligibility treatment with regard to long-term care (LTC) facilities. Section 1917 provides provisions for the treatment of an individual's assets, including applicable trusts, when calculating resources for eligibility purposes.

Sections 1917(b)(3)(A), 1917(c)(2)(D), and 1917(d)(5) of the Act, allow for a state agency to establish procedures under which the agency waives requirements of Section 1907 of the Act in determining eligibility with regard to assets and trusts of an individual if such requirements would create an undue hardship on the individual as determined on the basis of criteria established by the Secretary.

Furthermore, §1924(c)(3) of the Social Security Act, Assignment of support rights, states that an institutionalized spouse shall not be ineligible by reason of resources determined under paragraph (2) to be available for the cost of care where--

(A) The institutionalized spouse has assigned to the State any rights to support from the community spouse;

(B) The institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the State has the right to bring a support proceeding against a community spouse without such assignment; or

(C) The State determines that denial of eligibility would work an undue hardship.

Summary of Proposal

Purpose

To modify language in the Delaware Social Services Manual (DSSM) regarding eligibility determinations and post-eligibility treatment for long-term care (LTC) Medicaid applicants or Medicaid recipients residing in LTC facilities. This regulation modifies language regarding undue hardship provisions to align with current federal regulations and DMMA policy emphasizing personal choice and placement in the most integrated settings.

Summary of Proposed Changes

If implemented as proposed, plan amendment will accomplish the following, effective August 11, 2016:

Align undue hardship provisions, 20350.11 and 20400.12.1, of the DSSM with current federal regulations and DMMA policy emphasizing personal choice and placement in the most integrated settings.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the modification of the undue hardship provisions. Comments must be received by 4:30 p.m. on July 1, 2016.

Provider Manuals Update

Applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

Fiscal Impact Statement

This regulation does not change the way in which the Division of Medicaid and Medical Assistance applies the undue hardship provisions, but rather modifies language to match current federal regulations and DMMA policy. Therefore, there is no fiscal impact projected.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2016/proposed/19 DE Reg 1059RFA 06-01-16.pdf>

DMMA PROPOSED REGULATION #16-014a**REVISIONS:****20350.11 Undue Hardship**

A transfer of assets is exempt from consideration if the penalty would cause undue hardship. Undue hardship exists when application of the transfer of assets provisions would deprive the individual of medical care such that his/her health or his/her life would be endangered. Undue hardship also exists when application of the transfer of assets provisions would deprive the individual of food, clothing, shelter or other necessities of life ~~and there is no State facility available to take care of this individual in the absence of Medicaid eligibility.~~

DMMA PROPOSED REGULATION #16-014b**REVISIONS:****20400.12.1 Undue Hardship**

Undue hardship exists when application of the trust provisions would deprive the individual of medical care such that his/her life would be endangered. Undue hardship also exists when application of the trust provisions would deprive the individual of food, clothing, shelter or other necessities of life ~~AND there are no State facilities available to take care of this individual in the absence of Medicaid eligibility.~~

DIVISION OF PUBLIC HEALTHStatutory Authority: 16 **Delaware Code**, Section 122(3) (16 **Del.C.** §122(3))16 **DE Admin. Code** 4202**PUBLIC NOTICE****4202 Control of Communicable and Other Disease Conditions**

The Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Control of Communicable and Other Disease Conditions (4202). The purpose of the amendments is to provide for complete and accurate reporting of information related to Zika illness in Delaware. On June 1, 2016, DPH plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the June 1, 2016 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the DPH at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday July 8, 2016, at:

Jamie Mack

Division of Public Health

417 Federal Street

Dover, DE 19901

Email: jamie.mack@state.de.us

Phone: (302) 744-4951

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

[http://regulations.delaware.gov/register/june2016/proposed/19 DE Reg 1061RFA 06-01-16.pdf](http://regulations.delaware.gov/register/june2016/proposed/19%20DE%20Reg%201061RFA%2006-01-16.pdf)

PROPOSED REGULATIONS

4202 Control of Communicable and Other Disease Conditions (Break in Continuity of Sections)

2.0 Conditions to be Reported, Timeliness and Manner of Reporting (Break in Continuity Within Section)

2.2 Timeliness and Content of Notifiable Disease Reports

(Break in Continuity Within Section)

- 2.2.2 Except as otherwise provided by these regulations, reports of notifiable or other diseases or conditions required to be reported by these regulations shall contain sufficient information to contact the person reporting. When available, the following information shall be reported: the name, address, telephone number, date of birth, race, ethnicity, gender, and disease of the person ill or infected, the date of onset of illness; the name, address, and telephone number of the person's health care provider; and any pertinent laboratory medical information, including but not limited to laboratory information, diagnostic information or other information relevant to the reportable condition.

(Break in Continuity of Sections)

7.0 Control of Specific ~~Contagious~~ Diseases

*Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:

4202 Control of Communicable and Other Disease Conditions

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1101

REGISTER NOTICE SAN# 2015-11

1101 Definitions and Administrative Principles

1. TITLE OF THE REGULATIONS:

Section 2.0 "Definitions" of 7 DE Admin. Code 1101 Definitions and Administrative Principles.

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

Update the definition of volatile organic compounds (VOC) in 7 DE Admin. Code 1101 to mirror the federal definition at 40 CFR 51.100(s).

Delaware's air quality does not meet the federal health based standard for the pollutant ozone. Ozone is formed by reaction of nitrogen oxides (NOx) and VOC in the atmosphere, in the presence of heat and sunlight. Ozone concentrations are reduced by reducing NOx and VOC emissions. This action will add the following eight compounds to the list of compounds excluded from Delaware's regulatory definition of VOC on the basis that the Environmental Protection Agency (EPA) has determined that these compounds make a negligible contribution to ground level ozone formation: HFO-1234ze, HFE-134, HFE-236ca12, HFE-338pcc13, H-Galden1040x, trans 1-chloro-3,3,3-trifluoroprop-1-ene, HFO-1234yf, and 2-amino-2-methyl-1-propanol (AMP). Also, the recordkeeping, emission reporting, photochemical dispersion modeling and inventory requirements that were required for the exempt compound t-butyl acetate (TBAC) will be removed as shown in a recent federal action.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. Ch. 60, Environmental Control.

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None.

6. NOTICE OF PUBLIC COMMENT:

The hearing for this action is scheduled for June 22, 2016 at 6 PM in the DNREC Auditorium in the Richardson & Robbins Building located at 89 Kings Highway in Dover Delaware. Statements or testimony may be presented, orally or in writing, at the public hearing. The hearing record for the proposed revision to the VOC definition in 7 DE Admin Code 1101 will be open until July 7, 2016. Interested parties may submit comments in writing to David Fees by email to david.fees@state.de.us or by USPS to: David Fees, Delaware DNREC, Division of Air Quality, State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904.

7. PREPARED BY:

David Fees, P.E. phone: (302) 739-9402 fax: (302) 739-3106

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2016/proposed/19 DE Reg 1062RFA 06-01-16.pdf>

1101 Definitions and Administrative Principles
(Break in Continuity of Sections)

~~09/11/2009~~ xx/11/2016

2.0 Definitions

(Break in Continuity Within Section)

“Volatile organic compounds” (Also denoted as VOCs) means any carbon-containing compound, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity:

- methane;
- ethane;
- methyl chloroform (1,1,1-trichloroethane);
- CFC-113 (1,1,2-trichloro-1,2,2-trifluoromethane);
- methylene chloride (dichloromethane);
- CFC-11 (trichlorofluoromethane);
- CFC-12 (dichlorodifluoromethane);
- HCFC-22 (chlorodifluoromethane);
- HFC-23 (trifluoromethane);
- CFC-114 (1,2-dichloro-1,1,2,2-tetrafluoroethane);
- CFC-115 (chloropentafluoroethane);
- HCFC-123 (1,1,1-trifluoro-2,2-dichloroethane);
- HFC-134a (1,1,1,2-tetrafluoroethane);
- HCFC-141b (1,1-dichloro-1-fluoroethane);
- HCFC-142b (1-chloro-1,1-difluoroethane);
- HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);
- HFC-125 (pentafluoroethane);
- HFC-134 (1,1,2,2-tetrafluoroethane);
- HFC-143a (1,1,1-trifluoroethane);
- HFC-152a (1,1-difluoroethane);
- parachlorobenzotrifluoride (PCBTF);

- cyclic, branched, or linear completely methylated siloxanes;
- acetone;
- perchloroethylene (tetrachloroethylene);
- HCFC-225ca (3,3-dichloro-1,1,1,2,2-pentafluoropropane);
- HCFC-225cb (1,3-dichloro-1,1,2,2,3-pentafluoropropane);
- HFC-43-10mee (1,1,1,2,3,4,4,5,5,5-decafluoropentane);
- HFC-32 (difluoromethane);
- HFC-161 (ethylfluoride);
- HFC-236fa (1,1,1,3,3,3-hexafluoropropane);
- HFC-245ca (1,1,2,2,3-pentafluoropropane);
- HFC-245ea (1,1,2,3,3-pentafluoropropane);
- HFC-245eb (1,1,1,2,3-pentafluoropropane);
- HFC-245fa (1,1,1,3,3-pentafluoropropane);
- HFC-236ea (1,1,1,2,3,3-hexafluoropropane);
- HFC-365mfc (1,1,1,3,3-pentafluorobutane);
- HCFC-31 (chlorofluoromethane);
- HCFC-151a (1-chloro-1-fluoroethane);
- HCFC-123a (1,2-dichloro-1,1,2-trifluoroethane);
- 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃);
- 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCF₂CH₃);
- 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅);
- 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OC₂H₅);
- methyl acetate;
- HFE-7000 (1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane) (n-C₃F₇OCH₃);
- HFE-7500 [3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane];
- HFC-227ea (1,1,1,2,3,3,3-heptafluoropropane);
- methyl formate;
- HFE-7300 (1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane);
- ~~t-butyl acetate*~~; t-butyl acetate;
- propylene carbonate;
- dimethyl carbonate;
- trans-1,3,3,3-tetrafluoropropene (HFO-1234ze);
- HFE-134 (HCF₂OCF₂H);
- HFE-236cal2 (HCF₂OCF₂OCF₂H);
- HFE-338pcc13 (HCF₂OCF₂CF₂OCF₂H);
- H-Galden 1040X or H-Galden ZT 130 or (150 or 180) (HCF₂OCF₂OCF₂CF₂OCF₂H);
- trans 1-chloro-3,3,3-trifluoroprop-1-ene;
- 2,3,3,3-tetrafluoropropene;
- 2-amino-2-methyl-1-propanol; and
- perfluorocarbon compounds which fall into these classes:
 - Cyclic, branched, or linear, completely fluorinated alkanes.
 - Cyclic, branched, or linear, completely fluorinated ethers with no unsaturated bonds.
 - Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturated bonds.
 - Sulfur containing perfluorocarbons with no unsaturated bonds and with sulfur bonds only to carbon and fluorine.

* ~~t-butyl acetate is a VOC for purposes of all recordkeeping, emissions reporting, photo-chemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but is not a VOC for purposes of VOC emissions limitations or VOC content requirements.~~

29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/june2016/proposed/19 DE Reg 1065RFA 06-01-16.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

[7102 Regulations Governing Underground Injection Control](#)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

2400 BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Chapter 27 (10 **Del.C.** Ch. 27)
24 **DE Admin. Code** 2400

PUBLIC NOTICE

2400 Board of Examiners of Constables

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 **Del.C.** Ch. 27 proposes to adopt Rules: 4.0 - Badges & Vehicle Markings - requires all badges and vehicle markings to be approved by the Board. If you wish to view this adoption, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by July 1, 2016, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold a meeting on Thursday, July 28, 2016, Tatnall Building, 150 Martin L. King, Jr. Boulevard South, Room 112, Dover, DE.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2016/proposed/19 DE Reg 1066RFA 06-01-16.pdf>

2400 Board of Examiners of Constables

1.0 Licensing

(Break in Continuity Within Section)

- 1.6 Applicants, who have been law enforcement officers in the past but have been away from active law enforcement for more than five years, will be required to take an MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory), under the conditions noted in Rule subsection 1.4, and pass a comprehensive, multiple-choice examination of the minimum standards established by the Board to demonstrate their knowledge of the duties of a Constable. If the test is failed twice, the applicant will be required to take the full training course.

(Break in Continuity of Sections)

4.0 Reserved Badges and Vehicle Markings

- 4.1 No person licensed under 10 **Del.C.** Ch. 27 shall wear or display any uniform, patch, badge, seal, vehicle and the markings, letterhead, business card, advertisement, or other form of publication unless first approved by the Board of Examiners.
- 4.2 Under no circumstances shall any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests without proper authorization.
- 4.3 No such items will be approved by the Board if the item will mislead the public by confusing the entity and/or the constables with official law enforcement agencies and/or personnel.

- 4.4 All persons licensed under 10 Del.C. Ch. 27 shall wear or display their assigned badge visibly on the outermost garment.
- 4.5 Vehicle Identification
- 4.5.1 No vehicle utilized for purposes covered by 10 Del.C. Ch. 27 shall have an appearance that creates a reasonable likelihood of confusion with a police vehicle used by the Delaware State Police or a law enforcement agency of any state or governmental subdivision. The Board of Examiners shall have discretion to review the appearance of vehicles, and to make comparisons with known law enforcement vehicles, in order to enforce this Section.
- 4.5.2 In the event that a vehicle is not approved by the Board of Examiners pursuant to Section 4.0, the Board may indicate what changes to the vehicle appearance would be sufficient to satisfy the standards and criteria set forth above.
- 4.5.3 Auxiliary lights on vehicles, used for patrol, shall be amber and/or white only. Use of sirens is prohibited.

5.0 Firearm's Policy

(Break in Continuity Within Section)

- 5.6 Under no circumstances will anyone under this Rule Section be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.

Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:

2400 Board of Examiners of Constables

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
300 BOARD OF ARCHITECTS**

Statutory Authority: 24 Delaware Code, Section 306(a)(1) (24 **Del.C.** §306(a)(1))
24 **DE Admin. Code** 300

PUBLIC NOTICE

300 Board of Architects

The Delaware Board of Architects, pursuant to 24 **Del.C.** §306(a)(1), proposes to revise its regulations. The proposed regulatory overhaul seeks to bring the regulations into conformity with current law and remove outdated and inconsistent provisions. For example, the proposed changes eliminate unnecessary definitions; update the regulations pertaining to reciprocity and training in order to be consistent with recent changes in the statute pertaining to the same; changes the date of renewal from July 31st to January 31st; updates the language on the seal; and adds several drug crimes to the list of crimes related to the practice of architecture.

The Board will hold a public hearing on the proposed regulation change on July 6, 2016 at 1:30 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrative Specialist of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until July 21, 2016 pursuant to 29 **Del.C.** §10118(a).

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2016/proposed/19 DE Reg 1067RFA 06-01-16.pdf>

300 Board of Architects

1.0 Scope: Definitions

(Break in Continuity Within Section)

~~“Applicant” means an individual who has submitted an application for registration to the Board.~~

(Break in Continuity Within Section)

~~“Board” means the Delaware Board of Architects, 861 Silver Lake Blvd. Cannon Building, Suite 203, Dever, De 19903.~~

(Break in Continuity Within Section)

~~“Continuing Education Hour (CEH)” or “Continuing Education Unit (CEU)” means one continuous instructional hour (50 to 60 minutes of contact) spent in Structured Educational Activities intended to increase or update the architect’s knowledge and competence in Health, Safety, and Welfare Subjects. If the provider of the Structured Educational Activities prescribes a customary time for completion of such an Activity, then such prescribed time shall, unless the Board finds the prescribed time to be unreasonable, be accepted as the architect’s time for Continuing Education Hour purposes irrespective of actual time spent on the activity.~~

(Break in Continuity Within Section)

~~“IDP” means the Intern Development Program of NCARB.~~

~~“IDP Applicant” means an individual who has completed the IDP training requirements set forth herein and has submitted an application for registration to the Board.~~

~~“Initial Registration” means Receiving for the first time a certificate of registration as an architect in any United States jurisdiction or Canadian province.~~

(Break in Continuity Within Section)

~~“NAAB” means the National Architectural Accrediting Board.~~

~~“NCARB” means the National Council of Architectural Registration Boards.~~

(Break in Continuity Within Section)

~~“Safety” as it pertains to the practice of architecture means design characteristics of a building or its surrounding site relating to, but not limited to, compliance with occupancy classification requirements; compliance with construction classification requirements; means of egress; fire-rated construction assemblies; compliance with interior finish requirements; fire detection, alarm and suppression systems; and compliance with environmental health regulations and smoke control systems, compliance with the minimum requirements for heating and cooling; natural and artificial illumination; natural and artificial ventilation; physical hygiene; and accessibility from environmental barriers.~~

(Break in Continuity Within Section)

~~“Training Requirements” means the Intern Development Program (IDP) training requirements established from time to time by NCARB for certification by NCARB, as accepted by the Board from time to time.~~

2.0 General Provisions

2.1 NCARB:

2.1.1 The Board shall maintain membership in the National Council of Architectural Registration Boards (NCARB) and pay the necessary costs thereof.

(Break in Continuity Within Section)

2.2 Practice of Architecture:

(Break in Continuity Within Section)

2.2.3 The seal of an architect shall not be required for:

(Break in Continuity Within Section)

2.2.3.4 Pursuant to 24 Del.C. §303(b)(11) and (12), every person holding a NCARB Certificate, but not registered as an architect in Delaware ~~every person not registered as an architect~~

in Delaware, but meeting the requirements for reciprocal registration defined herein, and intending to offer architectural services in Delaware or participate in an architectural design competition in Delaware shall submit notice of such intent to the Board using the appropriate form appended to these regulations.

3.0 Application for Registration:

- 3.1 Submission of Application fee: Every individual seeking registration shall submit an application to the Board, accompanied by the filing fee established above. Such filing fee shall be determined in accordance with statutory criteria.

(Break in Continuity Within Section)

- 3.1.2 Proof of self-employment must be substantiated with the following:

- 3.1.2.1 ~~a~~ copy of business license(s) for those duration's claimed as part of the application or a letter from your accountant or local building official substantiating experience, or similar objective proof of self-employment.

- 3.2 Applicants; General:

(Break in Continuity Within Section)

- 3.2.4 Filing of an application, fees, etc., shall not be construed as completing the registration process; the ~~h~~Board will register applicants at regular Board meetings only.

(Break in Continuity of Sections)

4.0 Registration Standards:

- 4.1 Registration Standards: To be granted registration an applicant must:

(Break in Continuity Within Section)

- 4.1.2 Training – meet the Training Requirements set forth in the NCARB Intern Development Program Guidelines (IDP). Check NCARB's website, www.ncarb.org for updates and the most current information regarding the IDP.

- 4.1.2.1 ~~The IDP Training, as defined above, is a requirement for all applicants for initial registration in the State of Delaware. Applicants holding a current registration in good standing in another United States jurisdiction or Canadian province and documenting five (5) or more years of practicing architecture immediately preceding the date of the application that is acceptable to the Board may obtain a waiver of the IDP requirement. A request for waiver shall be made on a form prescribed by the Board.~~

(Break in Continuity Within Section)

- 4.1.5 Agree with the following conditions of examination:

- 4.1.5.1 take the ARE at any NCARB-approved test center, whether or not it is located in Delaware.
- 4.1.5.2 to accept the ARE results as determined by NCARB.
- 4.1.5.3 if there is any alleged misbehavior on the part of an applicant in connection with taking the examination, the ~~h~~Board will investigate the allegation and take appropriate action. Misbehavior may include, without limitation, violation of NCARB's guidelines or policies, or an applicant's confidentiality agreements with respect to the examination.

5.0 Reciprocal Registration

- 5.1 ~~Reciprocal Registration—An applicant who holds a current and valid certification issued by NCARB and submits satisfactory evidence of such certification to the Board shall be registered without the necessity of complying with provisions 4.1.2 through 4.1.4 if he/she:~~

- 5.1.1 holds a current and valid registration as an architect issued by a registration authority of the United States or Canada, and submits satisfactory evidence for such registration to the Board, and

5.1.2 ~~files his/her application with the Board, upon a form prescribed by the Board, containing such information satisfactory to the Board concerning the applicant, as the Board considers pertinent, and pays the applicable fee established by the Board.~~

5.0 Applications by Reciprocity

- 5.1 Persons seeking licensure pursuant to 24 Del.C. §309, shall submit payment of the fee established by the Division and an application on a form prescribed by the Board, which shall include proof of licensure and good standing in each state or territory of current licensure. Letters of good standing must also be provided for each state or jurisdiction in which the applicant was ever previously licensed.
- 5.2 Determination of Substantial Similarity of Licensing Standards - The applicant shall submit a copy of the statute and rules of licensure from the state of current licensure. The burden of proof is upon the applicant to demonstrate that the statute and rules of the licensing state are at least equivalent to the education, training, and examination requirements of this State. Based upon the information presented, the Board shall make a determination regarding whether the licensing requirements of the applicant's licensing state are substantially similar to those of Delaware.

6.0 Registration

- 6.1 Duration - Each certificate of registration issued by the Board shall be valid for two years, or the expiration of the current licensing period. The license renewal date is January 31 of even numbered years.
- 6.2 Continuing Education requirements for renewal.
- 6.2.1 In addition to all other requirements for registration renewal, an architect must complete a minimum of ~~42-24~~ Continuing Education Hours each ~~calendar year~~ renewal period including a minimum of 8 Continuing Education Hours in each year or be exempt from these continuing education requirements as provided below. Failure to comply with these requirements may result in non-renewal of the architect's registration. For an architect's initial registration period, the continuing education requirements shall be pro-rated at one Continuing Education Hour per month of registration, beginning with the first full month following the month of issuance, through the end of the renewal cycle. Up to four CE hours can be carried over into a subsequent calendar year.
- 6.2.1.1 Continuing Education Hours. ~~42~~ All Continuing Education Hours must be completed in Health, Safety, and Welfare Subjects acquired in Structured Educational Activities. Continuing Education Hours may be acquired at any location. ~~If an architect completes more than 12 continuing education hours in a calendar year, up to four excess hours may be carried forward and applied to the education requirement for the succeeding calendar year.~~

(Break in Continuity Within Section)

- 6.2.2 The following are acceptable Continuing Education:
- 6.2.2.1 NCARB monograph programs
- 6.2.2.2 ~~H~~Health, safety, and welfare programs approved by the American Institute of Architects (AIA).
- 6.3 Audits and Attestation of Compliance

(Break in Continuity Within Section)

- 6.3.3 Attestation of continuing education shall be submitted to the Division of Professional Regulation prior to ~~July~~ January 31st of the reporting year.
- 6.4 Hardship Extension: Requests for a hardship extension must be in writing and submitted to the Board prior to the expiration of the licensing period. The Board may, at ~~it's~~ its discretion, grant an extension of time within which the Continuing Education requirement must be completed. The period of hardship extension granted shall be determined by the Board.
- 6.5 Late Renewal
- 6.5.1 A registrant that has failed to renew on or before ~~July~~ January 31st renewal date may apply to the Board to renew their registration within four (4) months following the renewal date.

(Break in Continuity Within Section)

- 6.5.3 A registrant who has failed to complete the Continuing Education requirement of the previous two calendar years by the ~~July~~ January 31st renewal date may request, in writing, an extension of time of no more than four (4) months following the ~~July~~ January 31st renewal date to satisfy the immediately preceding two (2) year requirement. The request for an extension must be received by the Board in writing prior to the ~~July~~ January 31st renewal date.
- 6.5.4 No continuing education completed ~~during the late period~~ during the extension in order to satisfy the requirements of a preceding registration period may be used to satisfy future renewal requirements.

(Break in Continuity Within Section)

- 6.8 Reciprocity
- 6.8.1 Registration through reciprocity applications shall be governed by 24 **Del.C.** §309.
- 6.8.2 Applicants for registration through reciprocity who were previously registered as architects in Delaware and had the Certificate of Registration canceled or lapsed shall be required to certify that they have satisfied the minimum Continuing Education Requirement for Renewal provided in ~~Regulation~~ subsections 6.2 and 6.3 for the two year period preceding the new registration, notwithstanding that the Certificate of Registration was canceled or lapsed.

(Break in Continuity of Sections)

7.0 Rules of Professional Conduct - All architects shall abide by these Rules of Professional Conduct.

(Break in Continuity Within Section)

- 7.4 Compliance with Laws
- 7.4.1 ~~An architect shall not, in the conduct of his or her practice, knowingly violate any state, federal or local law, rule or regulation.~~
- 7.4.2 ~~An architect shall neither offer nor make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.~~
- 7.4.3~~1~~ An architect shall comply with the registration laws and regulations governing his/her professional practice in any United States jurisdiction. An architect may be subject to disciplinary action if, based on grounds substantially similar to those which lead to disciplinary action in this jurisdiction, the architect is disciplined in any other United States jurisdiction.
- 7.4.4~~2~~ An employer engaged in the practice of architecture shall not have been found by a court or an administrative tribunal to have violated any applicable federal or state law protecting the rights of persons working for the employer with respect to fair labor standards or with respect to maintaining a workplace free of discrimination. For purposes of this rule, any registered architect employed by a firm engaged in the practice of architecture who is in charge of the firm's architectural practice, either alone or with other architects, shall be deemed to have violated this rule if the firm has violated this rule.

(Break in Continuity of Sections)

9.0 Crimes substantially related to the practice of architecture

- 9.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of architecture in the State of Delaware without regard to the place of conviction:
- 9.1.1 Criminal solicitation in the second degree if the underlying crime is a crime substantially related to the practice of architecture. 11 **Del.C.** §502
- 9.1.2 Criminal solicitation in the first degree if the underlying crime is a crime substantially related to the practice of architecture. 11 **Del.C.** §503.

PROPOSED REGULATIONS

9.1.3 Conspiracy in the first degree if the underlying crime is a crime substantially related to the practice of architecture. 11 **Del.C.** §513.

(Break in Continuity Within Section)

9.1.71 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** §4751(a), (b) and (c).

9.1.72 Prohibited acts B under the Uniform Controlled Substances Act. 16 **Del.C.** §4752(a) and (b).

9.1.73 Drug Dealing - Aggravated Possession; class B felony. 16 **Del.C.** §4752.

9.1.74 Drug Dealing - Aggravated Possession; class C felony. 16 **Del.C.** §4753.

9.1.75 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A (a)(1)-(9).

9.1.76 Drug Dealing - Aggravated Possession; class D felony. 16 **Del.C.** §4754.

9.1.77 Drug Dealing - Aggravated Possession; class E felony. 16 **Del.C.** §4755.

9.1.78 Drug Dealing - Aggravated Possession; class F felony. 16 **Del.C.** §4756.

9.1.79 Prohibited acts under the Uniform Controlled Substances Act. 16 **Del.C.** §4756(a)(1)-(5) and (b).

9.1.80 Distribution to persons under 21 years of age. 16 **Del.C.** §4761.

9.1.81 Purchase of drugs from minors. 16 **Del.C.** §4761A.

9.1.82 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 **Del.C.** §4767.

9.1.83 Drug paraphernalia; felony. 16 **Del.C.** §4771 (a) and (b).

9.2 Crimes substantially related to the practice of architecture shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

*_*_*_*_*_*

Del.

Seal

*_*_*_*_*_*

Notice of Offer of Architectural Services in Delaware

To: Delaware Board of Architects
861 Silver Lake Blvd., Suite 203
Dover, DE 19904

From:

Name of NCARB Certificate holder: _____

NCARB Certificate number: _____

Firm Name: _____

Firm Address: _____

Telephone: _____

Mail: _____

Notice is hereby provided, pursuant to 24 **Del.C.** §303(b)(11), to the Delaware Board of Architects by the undersigned person, that:

- a. The person holds a ~~National Council of Architectural Registration Boards (NCARB) certificate~~ meets the requirements for reciprocal registration and is not currently registered in Delaware, but will be present in Delaware for the purpose of offering to provide architectural services;

-
- b. The person will deliver a copy of this notice to every potential client to whom the person offers to render architectural services; and
 - c. The person will provide the Board with a statement of intent that the person will apply immediately to the Board for registration, if selected as the architect for a project in Delaware.

The undersigned person shall not perform any of the professional services involved in the practice of architecture in Delaware until registered as an architect in Delaware.

Signature of ~~NCARB certificate holder~~:

Date: _____

*_*_*_*_*_*
Del.
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*_*_*_*_*_*

Notice of Participation in an Architectural Design Competition in Delaware

To: Delaware Board of Architects
861 Silver Lake Blvd., Suite 203
Dover, DE 19904

From:

Name of ~~NCARB Certificate holder~~: _____

NCARB Certificate number: _____

Firm Name: _____

Firm Address: _____

Telephone: _____

Mail: _____

Notice is hereby provided, pursuant to 24 **Del.C.** §303(b)(12), to the Delaware Board of Architects by the undersigned person, that:

- a. The person ~~holds a National Council of Architectural Registration Boards (NCARB) certificate~~ meets the requirements for reciprocal registration and is not currently registered in Delaware, but will be present in Delaware for the purpose of participating in an architectural design competition;
- b. The person will deliver a copy of this notice to every person conducting architectural design competition in which the person participates; and
- c. The person will provide the Board with a statement of intent that the person will apply immediately to the Board for registration, if selected as the architect for the project.

Signature of ~~NCARB certificate holder~~:

Date: _____

PROPOSED REGULATIONS

Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:

300 Board of Architects

**DIVISION OF PROFESSIONAL REGULATION
1900 BOARD OF NURSING**

Statutory Authority: 24 Delaware Code, Section 1904(c) (24 **Del.C.** §1904(c))
24 **DE Admin. Code** 1900

PUBLIC NOTICE

1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise regulations 8.0, *et. seq.* The proposed changes update the regulations to reflect the current terminology from advanced practice nurse to advanced practice registered nurse and seek to bring the nursing regulations into line with a recent statutory change addressing advanced practice registered nurses collaborative agreements, prescriptive authority, and independent.

The Board will hold a public hearing on the proposed regulation change on July 13, 2016 at 9:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Peggy Mack, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until July 28, 2016 pursuant to 29 **Del.C.** §10118(a).

***Please Note:**

(1) **The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2016/proposed/19 DE Reg 1074RFA 06-01-16.pdf>

(2) **Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

1900 Board of Nursing

**DIVISION OF PROFESSIONAL REGULATION
2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE**

Statutory Authority: 24 Delaware Code, Section 2006(a)(1) (24 **Del.C.** §2006(a)(1))
24 **DE Admin. Code** 2000

PUBLIC NOTICE

2000 Board of Occupational Therapy Practice

Pursuant to 24 **Del.C.** §2006(a)(1), the Delaware Board of Occupational Therapy Practice has proposed revisions to its rules and regulations. The rules pertaining to renewal of an expired license are amended and a regulation addressing telehealth is added.

A public hearing will be held on July 20, 2016 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Occupational Therapy Practice, 861 Silver Lake

Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 Del.C. §10118(a).

***Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/june2016/proposed/19 DE Reg 1074aRFA 06-01-16.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

2000 Board of Occupational Therapy Practice

**DIVISION OF PROFESSIONAL REGULATION
3800 BOARD OF DIETETICS/NUTRITION**

Statutory Authority: 24 Delaware Code, Section 3805(1) (24 Del.C. §3805(1))
24 DE Admin. Code 3800

PUBLIC NOTICE

3800 State Board of Dietetics/Nutrition

The Delaware Board of Dietetics/Nutrition, pursuant to 24 Del.C. §3805(1), proposes to revise its regulations. The proposed amendments to the regulations seek to clarify and provide more detailed information regarding the use of telehealth for the provision of dietetics and nutrition services.

The Board will hold a public hearing on the proposed rule change on August 12, 2016 at 1:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator of the Delaware Board of Dietetics/Nutrition, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until August 27, 2016.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2016/proposed/19 DE Reg 1075RFA 06-01-16.pdf>

**3800 State Board of Dietetics/Nutrition
(Break in Continuity of Sections)**

9.0 Telehealth

9.1 Telehealth is the use of electronic communications to provide and deliver a host of health-related information and health-care services, including dietetics and nutrition-related information and services, over large and small distances. Telehealth encompasses a variety of health care and health promotion activities, including education, advice, reminders, interventions, and monitoring of interventions.

9.2 The licensed dietitian/nutritionist (referred to as "licensee" for the purpose of this Board Rule) who provides treatment through telehealth shall meet the following requirements:

9.2.1 Location of patient during treatment through telehealth

9.2.1.1 The licensee shall have an active Delaware license in good standing to practice telehealth in the state of Delaware.

9.2.1.2 Licensees understand that this rule does not provide licensees with authority to practice telehealth to clients located in any jurisdiction other than Delaware, and licensees bear responsibility for complying with laws, rules, and/or policies for the practice of telehealth set forth by other jurisdictional boards dietetics and nutrition.

PROPOSED REGULATIONS

- 9.2.1.3 Licensees practicing telehealth shall comply with all of these rules of professional conduct and with requirements incurred in state and federal statutes relevant to the practice of dietetics and nutrition.
- 9.2.2 Informed consent
- 9.2.2.1 Before services are provided through telehealth, the licensee shall obtain written, informed consent from the patient, or other appropriate person with authority to make health care treatment decisions for the patient. At minimum, the informed consent shall inform the patient and document acknowledgement of the risk and limitations of:
- 9.2.2.1.1 The use of electronic communications in the provision of care;
- 9.2.2.1.2 The potential breach of confidentiality, or inadvertent access, of protected health information using electronic communication in the provision of care; and
- 9.2.2.1.3 The potential disruption of electronic communication in the use of telehealth.
- 9.2.3 Confidentiality: The licensee shall ensure that the electronic communication is secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act (HIPAA) and other applicable Federal and State laws. Confidentiality shall be maintained through appropriate processes, practices and technology, including disposal of electronic equipment and data.
- 9.2.4 Competence and scope of practice
- 9.2.4.1 The licensee shall be responsible for determining and documenting that telehealth is an appropriate level of care for the patient.
- 9.2.4.2 The licensee shall comply with the Board's law and rules and regulations and all current standards of care requirements applicable to onsite care.
- 9.2.4.3 The licensee shall limit the practice of telehealth to the area of competence in which proficiency has been gained through education, training and experience.
- 9.2.4.4 All initial evaluations shall be performed face to face and not through telehealth.
- 9.2.4.5 The licensee shall document in the file or record which services were provided by telehealth.

Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:

3800 State Board of Dietetics/Nutrition

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**Bracketed bold stricken through]**~~ indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10005 (3 **Del.C.** §10005)
3 **DE Admin. Code** 501

ORDER**501 Harness Racing Rules and Regulations**

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on March 10, 2016, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 7.1.3.3.2 and 7.1.3.3.3 in the April 1, 2016 *Register of Regulations*.
2. The Commission received a written comment with no substantive changes. Changes were made for the purpose of clarification. The Commission held the public comment period open until close of business on May 9, 2016. The Delaware Harness Racing Commission finalized the regulations at its regularly scheduled monthly meeting on May 10, 2016. Monthly meetings are noticed public meetings.

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.
4. After considering the rule changes as proposed, the Commission hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness racing Commission

rules to more accurately reflect current policy and procedures.

5. The effective date of this Order will be ten (10) days from publication of this Order in the *Register of Regulations* on June 1, 2016.

IT IS SO ORDERED this 10th day of May 2016.

Beverly H. (Beth) Steele, Chairman

Patt Wagner, Vice Chairman

George P. Staats, Commissioner

Jack Berberian, Commissioner
(absent)

Stephanie Liguori, Commissioner

501 Harness Racing Rules and Regulations

(Break in Continuity of Sections)

7.0 Rules of the Race

7.1 Declarations and Drawing

(Break in Continuity Within Section)

7.1.3 Qualifying Races

(Break in Continuity Within Section)

- 7.1.3.3 At all extended pari-mutuel meetings declarations for overnight events shall be governed by the following:

(Break in Continuity Within Section)

- 7.1.3.3.2 Any horse that fails to race within ~~thirty (30)~~ sixty (60) days of its last start must go a qualifying race as set forth in a) 7.1.3.3.1 above. ~~However, at any race meeting this period can be extended up to sixty (60) days upon receiving approval of the Commission.~~ The time period allowed shall be calculated from the date of the last race to and including the date of ~~declaration~~ the next race. Horses entered and in to go in a race or races which are canceled due to no fault of their own, shall be considered to have raced in that race, and no start shall be counted for date preference purposes.

- 7.1.3.3.3 When a horse has raced at a chartered meeting and then gone to meetings where the races are not chartered[,], the information from the uncharted lines may be ~~[summarized including each start and consolidated in favor of chartered lines to include a chartered line used to count as a start]~~ within the last ~~thirty (30)~~ sixty (60) days ~~[before the horse is permitted to race]~~. The consolidated line shall carry date, place, ~~[fractions,]~~ time, driver, finish, track condition and distance.

*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2016 issue of the *Register* at page 881 (19 DE Reg. 881). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

501 Harness Racing Rules and Regulations

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 292

REGULATORY IMPLEMENTING ORDER

292 Post Secondary Institutions and Degree Granting Institutions of Higher Education

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education. The regulation is being reformatted and revised to clarify the approval process for Degree Granting Institutions of Higher Education.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on March 1, 2016, in the form hereto attached as Exhibit "A". Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities regarding: (1) the use of terms Recognized Applicant and Recognized Approval being used interchangeably. The Department agrees clarification was needed and used "Recognized Applicant" within the regulation, (2) the regulation not addressing separate standards for degree granting law schools. The Department does not have authority to provide degree granting authority to law schools, thus it was not addressed in the regulation, (3) clarification needed for institutions incorporating in Delaware to provide documentation of official Department approval with any certificate of incorporation that includes the power to confer academic and honorary degrees. No further clarification is needed as the Department does not oversee the incorporation process, which is governed by statute, (4) the need for both hard and electronic versions to be submitted. The Department believes both formats are necessary for document search and archival purposes, (5) the timeliness of notice to students regarding institutions lack of authority to confer degrees or if their status to do so is terminated. The Department agrees that student notification in these areas should be clarified and provided such clarification in the regulations, (6) reference to "changes" really meaning "changes in accreditation." For clarification purposes, the Department changed the terminology to "changes in its accreditation" where applicable, (7) determining involvement of Division of Corporations in the process of Provisional Approval. No change was needed as the Department will inform the Division of Corporations if the Institution is no longer authorized to confer Degrees as is stated in the regulation, (8) the contents of DOE's endorsement on the certificate of incorporation and amendments of a degree granting institution. The Department appreciates this comment and will contemplate this idea further. Other changes, including some grammatical, were made to further clarify the intent of the regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education in order to clarify the approval process for Degree Granting Institutions of Higher Education.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education in the Administrative Code of Regulations for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on May 19, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of May 2016.

Department of Education

Steven H. Godowsky, Secretary of Education
Approved this 19th day of May 2016

State Board of Education

Teri Quinn Gray, Ph.D., President (not present)	Gregory B. Coverdale, Jr.
Jorge L. Melendez, Vice President	Terry M. Whittaker, Ed.D.
G. Patrick Heffernan	Nina L. Bunting
Barbara B. Rutt (not present)	

292 Post Secondary Institutions and Degree Granting Institutions of Higher Education

1.0 Definitions

The words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

(Break in Continuity Within Section)

“**Private Business and Trade Schools**” has the same meaning as in 14 Del.C. §8501(4)[(3)].

(Break in Continuity Within Section)

“**Provisional Approval**” means the second level of Degree Granting Authority [status] granted by the Department.

“**Recognized [Approval Applicant]**” means the initial level of Degree Granting Authority status granted by the Department.

(Break in Continuity of Sections)

5.0 Application Process and Review

(Break in Continuity Within Section)

5.2 The Application Form and supporting material shall be reviewed by the Department or an evaluation team selected by the Department. After the review, the Department may require a meeting with the Board of Trustees or the administrative staff[, or both,] of the Institution [~~or both~~]. The Department may also require an on-site visit.

(Break in Continuity Within Section)

6.0 ~~Additional Procedures for Approval of Non-Delaware Institutions of Higher Education that Offer Courses, Programs of Courses or Degrees Within the State of Delaware~~ Levels of Approval and Institution Requirements

(Break in Continuity Within Section)

6.1 Recognized Applicant

(Break in Continuity Within Section)

6.1.4 Reporting and Renewal

(Break in Continuity Within Section)

6.1.4.6 The Institution shall submit updated Agent [identification and license] information and appropriate fees as part of its renewal request.

(Break in Continuity Within Section)

6.1.6 Student Notification

[6.1.6.1 The Institution shall notify students individually, in writing, upon application and admission, that it does not have Degree Granting Authority.]

6.1.6.[42] The Institution shall notify students individually, in writing, near the end of the first school year with classes, but prior to the close of classes, that it does not have Degree Granting

Authority if it is offering students an Associate's Degree or any two-year Degree, and it has not received its Degree Granting Authority near the end of the first school year with classes. The Institution shall provide such notification annually thereafter until Provisional Approval is achieved.

6.1.6.[23] The Institution shall notify students individually, in writing, near the end of the second school year with classes, but prior to the close of classes, that it does not have Degree Granting Authority if it is offering students a Bachelor's Degree or any four-year Degree, and it has not received its Degree Granting Authority near the end of the second school year with classes. The Institution shall provide such notification annually thereafter until Provisional Approval is achieved.

[6.1.6.4 The Institution shall notify students individually, in writing, if Degree Granting Authority is revoked at any time.]

6.1.7 Advancement to Provisional Approval

6.1.7.1 The ~~Institute~~ Institution] may request to advance to the next level of approval at the end of the second year of operation or later and at the time that it submits a progress report. At that time, the ~~Institute~~ Institution] shall also submit an Application Form indicating a request to advance to the next level of approval status.

6.1.7.2 The Application Form and supporting material shall be reviewed by the Department or an evaluation team selected by the Department. If the Department determines that, based on all the facts gained, the Institution appears to meet, or shows promise of meeting, a significant portion of the standards as stated in this regulation, the Institution shall be advanced to the next level of approval status: Provisional Approval. The Department shall issue a memorandum indicating that the Institution has been granted a status of Provisional Approval.

6.1.7.3 Those Institutions required to remain on Recognized ~~Approval Applicant~~ status shall be informed of the changes and improvements necessary to be eligible for Provisional Approval status. There is no guarantee that a Recognized ~~Approval Applicant~~ Institution will be given either Provisional or Full Approval.

6.1.8 Termination

6.1.8.1 The following are grounds for termination of approval status:

(Break in Continuity Within Section)

6.1.8.1.4 The Institution fails to request annual renewal of ~~their~~ its] status or request timely advancement to next status level; or

6.1.8.1.5 The Institution does not submit payment of appropriate fees.

6.1.8.2 If the Institution's approval status is terminated, the approval status will automatically expire one year after approval. If an Institution's approval ~~status~~ expires, the Institution shall be required to begin the application process from the beginning and submit a new Application Form.

6.2 Provisional Approval

6.2.1 Provisional ~~aA~~ approval is the second level of approval granted by the Department. An Institution with Provisional Approval status shall have the right to confer Degrees.

(Break in Continuity Within Section)

6.2.3 An Institution receiving Provisional Approval may incorporate under 8 Del.C. §125 with the right to confer Degrees. If ~~after the three years with a Provisional Approval status, and~~ the Institution has previously incorporated without the right to confer Degrees, the Institution may amend their ~~charter~~ certificate of incorporation in accordance with 8 Del.C. §125] to include the Degree Granting Authority privilege. The Institution shall retain this status until after the first class has been graduated.

[6.2.3.1 The Institution shall amend its certificate of incorporation to acknowledge its Degree Granting Authority and Provisional Approval.]

FINAL REGULATIONS

6.2.4 Provisional Approval status may be valid for up to three years. If the Department determines that the Institution continues to meet the requirements of this regulation and is making progress towards the next level of recognition, Provisional Approval status may be ~~extended yearly renewed~~.

6.2.5 Provisional ~~a~~approval and its requirements must be met by the ~~Institute~~ Institution] until such time as the Institution receives accreditation from an Accrediting Agency or the Department determines that the Institution may advance to the next status level of Full Approval.

6.2.6 Reporting and Renewal

6.2.6.1 After the initial approval, renewal approval for Institutions with Provisional Approval ~~shall be may be renewed~~ contingent upon submission of an Application Form, new and updated accreditations, a current course catalog and appropriate fees. The Institution shall submit a progress report six months prior to the expiration of its Provisional Approval. The Application Form to request renewal will accompany the progress report.

(Break in Continuity Within Section)

6.2.6.1.5 The Institution shall submit an updated Agent ~~application~~ identification and license request] and appropriate fees as part of its renewal request.

6.2.6.1.6 The Institution shall keep the Department informed of any changes since its most recent approval, including ~~changes in its accreditation,~~ the names and addresses of those responsible for directing Programs from the parent campus[,] and the locations of all sites in Delaware where instruction is offered.

6.2.7 Advancement to Full Approval

6.2.7.1 The ~~Institute~~ Institution] may request to advance to the next level of approval six months prior to the expiration of its current Provisional Approval term in its progress report or upon receipt of accreditation. At that time, the ~~Institute~~ Institution] shall also submit an Application Form, with required documents, indicating a request to advance to Full Approval status.

(Break in Continuity Within Section)

6.2.7.4 If a~~n~~ Institution with] Provisional Approval ~~Institution~~ status] does not receive Full Approval within four years after the first graduating class, the Department may withdraw all approval and inform the ~~Corporation Division of Delaware~~ Delaware Division of Corporations] that the Institution is no longer authorized to confer Degrees. ~~The Institution shall also notify students in writing of the revocation of Degree Granting Authority as noted in subsection 6.1.6.4]~~

6.2.8 Termination

6.2.8.1 The following are grounds for termination of ~~Provisional Aa~~approval status:

(Break in Continuity Within Section)

6.2.8.1.4 The Institution fails to request annual renewal of ~~their~~ its] status or request timely advancement to next status level; or

6.2.8.1.5 The Institution fails to submit payment of appropriate fees.

6.2.8.2 If the Institution's approval status is terminated, the approval status will automatically expire one year after approval. If an Institution's approval ~~status~~ expires, the Institution shall be required to begin the application process from the beginning.

6.3 Full Approval

(Break in Continuity Within Section)

6.3.3 An Institution receiving Full Approval may incorporate under 8 Del.C. §125 with the right to confer Degrees. If the Institution has previously incorporated without the right to confer Degrees, the Institution ~~may shall~~ amend ~~their charter~~ its certificate of incorporation in accordance with 8 Del.C. §125] to include the Degree Granting Authority ~~privilege~~. The Institution shall retain this status until after the first class has been graduated.

(Break in Continuity Within Section)

6.3.5 Reporting and Renewal

6.3.5.1 The Institution shall submit an Application Form with accompanying documents to request Renewal no later than six months prior to the expiration of its Full Approval status.

6.3.5.1.1 The Department or the evaluation committee may make an on site visit to the Institution in order to verify the contents of the report and evaluate progress to date.

6.3.5.2 The Institution shall submit an updated Agent **[application identification and license request]** and appropriate fees as part of its renewal request.

6.3.5.3 All Institutions shall keep the Department informed of any changes since its most recent approval, including **[changes in its accreditation,]** the names and addresses of those responsible for directing Programs from the parent campus[,] and the locations of all sites in Delaware where instruction is offered.

6.3.6 Termination

6.3.6.1 The following are grounds for termination of **[Full aA]**approval status:
(Break in Continuity Within Section)

6.3.6.1.4 The Institution fails to request annual renewal of **[their its]** status; or

6.3.6.1.5 The Institution fails to submit payment of appropriate fees.

6.3.6.2 If the Institution's approval status is terminated, the approval status will automatically expire one year after approval. If an Institution's approval **[status]** expires, the Institution shall be required to begin the application process from the beginning and submit a new Application Form.

6.4 Operating License

(Break in Continuity Within Section)

6.4.4 Renewal

6.4.4.1 The Institution shall submit an Application Form with accompanying documents to request renewal no later than six months prior to the expiration of its Operating License.

6.4.4.1.1 The Department or the evaluation committee may make an on site visit to the Institution in order to verify the contents of the report and evaluate progress to date.

6.4.4.2 The Institution shall submit an updated Agent **[application identification and license request]** and appropriate fees as part of its renewal request.

6.4.4.3 All Institutions shall keep the Department informed of any changes since its most recent approval, including **[changes in its accreditation,]** the names and addresses of those responsible for directing the Programs from the parent campus, and the locations of all sites in Delaware where instruction is offered.

6.4.5 Termination

6.4.5.1 The following are grounds for termination of an Operating License:

(Break in Continuity Within Section)

6.4.5.1.4 The Institution fails to request timely renewal of **[their its]** status; or

6.4.5.1.5 The Institution fails to submit payment of appropriate fees.

6.4.5.2 If the Institution's approval status is terminated, the approval status will automatically expire one year after approval. If an Institution's approval **[status]** expires, the Institution shall be required to begin the application process from the beginning and submit a new Application Form.

7.0 ~~Violations of the Law~~ Agents

(Break in Continuity Within Section)

7.1 The Institution shall submit the appropriate Agent **[application identification and license]** identifying the Agent(s), and their respective corporate affiliations, who will represent the Institution when contacting individuals within the state of Delaware for the purpose of soliciting enrollment in the Institution.

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7.2 Each individual identified in the Institution's application as an Agent may be granted a license to represent the Institution.

7.3 The Institution shall submit the appropriate Agent fee.

(Break in Continuity of Sections)

10.0 Additional of Programs After Initial Approval for Institutions whose Degree Granting Authority Originates from Delaware

(Break in Continuity Within Section)

10.5 The additional Program(s) may be granted provisional approval [under this section] for a period of 1 to 3 years or to the date of the next Institutional review if the time period is less than 1 to 3 years.

10.6 The Institution shall submit the appropriate fees with its request for new Program(s).

[10.7 The Institution shall notify students individually, in writing, if approval for new Program(s) is revoked at any time.]

(Break in Continuity of Sections)

11.0 Fees and Costs

11.1 Institutions applying for Degree Granting Authority are responsible for the following fees:

11.1.1 The initial application fee is \$250.00;

11.1.2 Institutions that have a designation of Recognized Applicant **[status]** or Provisional Approval **[status]** shall pay an annual fee of \$250.00 until the Institution achieves Full Approval status. Once Full Approval status **[or extension thereof]** is achieved[,] the Institution **[is subject to shall pay]** a fee of \$1000.00 **[authorizing for]** the Institution to have Degree Granting Authority **[for up to five years]**.

(Break in Continuity Within Section)

11.3 Institutions applying for an Operating License are responsible for the following fees:

11.3.1 The Initial application fee is \$250.00;

11.3.2 Upon approval for **[or renewal of]** an Operating License, the Institution shall pay an Operating License fee of \$1000.00 **[valid for up to five years]**.

(Break in Continuity Within Section)

11.7 Any and all costs incidental to the evaluation and approval of a Program **[or of eC]ourse[s]**, except the salary of personnel from publicly supported education Institutions in Delaware, shall be the responsibility of the applicant Institution.

(Break in Continuity of Sections)

13.0 Violations of the Law

Violations of the law and regulations relating to Institutions as herein described shall be referred to the Attorney General of the State of Delaware for any action **[or]** permitted or required by law.

*Please note that no additional changes were made to the regulation as originally proposed and published in the March 2016 issue of the *Register* at page 809 (19 DE Reg. 809). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

292 Post Secondary Institutions and Degree Granting Institutions of Higher Education

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 1006

REGULATORY IMPLEMENTING ORDER

1006 Delaware Interscholastic Athletic Association (DIAA)

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA). A technical error is being changed within this regulation related to the name of the State Board of Education Manual for the Conduct of Hearings Before the State Board of Education (see Section 11.0). Two additional nonsubstantive changes were made (see Section 7.0 and Section 9.0).

Notice of the proposed regulation was not published in the *News Journal* and the *Delaware State News* as it is exempt pursuant to 29 **Del.C.** §10113 from the procedural requirements of the APA. Therefore, there is no Exhibit A with this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) to correct a technical error to the name of the State Board of Education Manual for the Conduct of Hearings Before the State Board of Education (see Section 11.0). Additionally, two nonsubstantive changes were made (see Section 7.0 and Section 9.0).

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) in the Administrative Code of Regulations for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on May 19, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of May 2016.

Department of Education
Steven Godowsky, Secretary of Education

Approved this 19th day of May 2016

State Board of Education

Teri Quinn Gray, Ph.D., President (not present)	Gregory B. Coverdale, Jr.
Jorge L. Melendez, Vice President	Terry M. Whittaker, Ed.D.
G. Patrick Heffernan	Nina L. Bunting
Barbara B. Rutt (not present)	

1006 Delaware Interscholastic Athletic Association (DIAA)
(Break in Continuity of Sections)

7.0 Reporting Violations of Department of Education Regulations and Protests and Complaints to DIAA

7.1 Reporting violations of Department of Education regulations

- 7.1.1 If a school violates a provision of the Department of Education regulations the administrative head or his/her designee shall notify the Executive Director in writing of the violation. The Executive Director may ~~imposes~~ impose immediate penalties. All violations shall be reviewed by the DIAA Board of Directors which may impose additional penalties.

(Break in Continuity of Sections)

9.0 Waiver of DIAA Rules and Regulations

9.1 General

(Break in Continuity Within Section)

- 9.1.4 Waiver requests ~~would~~ should be filed promptly when it becomes apparent to the student, principal, headmaster or other affected party, that a waiver will be required. In any event, all requests for a waiver of the rules, with all documentation complete, must be received by the Executive Director at least 21 calendar days before the next regularly scheduled meeting of the DIAA Board in order to be placed on the agenda for that meeting.

(Break in Continuity of Sections)

11.0 Appeal to the State Board of Education

- 11.1 Any party to a controversy involving the athletic rules and regulations, including a waiver thereof, may appeal to the State Board of Education by setting forth such grievance in a petition. The petition or notice of appeal shall be served on the Secretary of Education no later than thirty (30) calendar days after receipt of the decision. In addition, a copy of the petition or notice of appeal shall be served on the Executive Director of DIAA by certified or registered mail. Any decision shall otherwise be final. All appeals to the State Board of Education shall be on the basis of the record. (See ~~14 Del.C. §312 and the State Board of Education Manual for the Conduct of Hearings Before the State Board of Education Procedures Manual~~). An appeal shall not stay the decision of the DIAA Board of Directors.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

1006 Delaware Interscholastic Athletic Association (DIAA)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1559

REGULATORY IMPLEMENTING ORDER

1559 Skilled and Technical Sciences Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1559 Skilled and Technical Science Teacher in order to update educational experience required. This regulation sets forth the requirements for a Skilled and Technical Science Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on April 1, 2016. The notice received written comments from the Governors' Advisory Council for Exceptional Citizens. The suggestions that were made were considered by the Professional Standards Board, but no changes were made at this time as the revisions addressed an issue which had been found to be an impediment to attracting qualified individuals to the profession.

II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §1305(a), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1559 Skilled and Technical Science Teacher of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

APPROVED BY THE PROESSIONAL STANDARDS BOARD THE 5th DAY OF MAY, 2016
Regulation 1559 - SKILLED AND TECHNICAL SCIENCES TEACHER

Bryon Murphy, Chair
Diane Albanese
Amber Augustus
Linda Brown

Darren Guido
David Kohan, Vice Chair
Rosaria Macera
Darlene O'Neill

Jennifer Burton
Stephanie DeWitt
Nelia Dolan
Laura Glass

Mary Pinkston (absent)
Stephanie Smith
Sue Smith

IT IS SO ORDERED THIS 19th day of May, 2016.

DEPARTMENT OF EDUCATION

Steven H. Godowsky, Secretary of Education

Approved this 19th day of May, 2016.

State Board of Education

Teri Quinn Gray, Ph.D., President
Jorge L. Melendez, Vice President
G. Patrick Heffernan
Barbara B. Rutt

Gregory B. Coverdale, Jr.
Terry M. Whittaker, Ed.D.
Nina Lou Bunting

**1559 Skilled and Technical Sciences Teacher
(Break in Continuity of Sections)**

4.0 Educational Requirements

An educator shall also have met the following:

- 4.1 Satisfactorily completed nine (9) Career-Related Credits related to their area of certification and six (6) **[Technical]** Education Pedagogy credits; and

*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2016 issue of the *Register* at page 882 (19 DE Reg. 882). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1559 Skilled and Technical Sciences Teacher

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

ORDER

Prescription Drug Supplemental Rebate Agreement

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan regarding the State's Prescription Drug Supplemental Rebate Agreement, *specifically, to amend Delaware's supplemental drug rebate agreement and place Delaware in "The Sovereign State Drug Consortium (SSDC)" Medicaid multi-state purchasing pool.* The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del.C.** §10115 in the April 2016 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the

proposed regulations to be produced by May 2, 2016 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding the State's Prescription Drug Supplemental Rebate Agreement, specifically, *to amend Delaware's supplemental drug rebate agreement and place Delaware in "The Sovereign State Drug Consortium (SSDC)" Medicaid multi-state purchasing pool.*

Statutory Authority

- 1927(a)(1), 1927 (a)(4) of the Social Security Act and 42 U.S.C. §13966-8, *authorizes state to enter directly into separate or supplemental rebate agreements with manufacturers*
- 1927(b)(3)(D) of the Social Security Act, *confidentiality of information disclosed by manufacturers or wholesalers*
- 1927(d)(1)(A) of the Social Security Act, *prior authorization on covered outpatient drug*
- 1927(d)(5) of the Social Security Act, *requirements of prior authorization programs*
- 1902(a)(19) of the Social Security Act, *care and services under a Medicaid state plan be provided in a manner consistent with simplicity of administration and the best interests of beneficiaries*
- 42 U.S.C. §256b, *imposes ceilings on prices drug manufacturers may charge for medications sold to specified health care facilities*

Background

Under the Medicaid program, states may provide coverage of outpatient drugs as an optional service under section 1905(a)(12) of the Social Security Act (the Act). Section 1903(a) of the Act provides for Federal Financial Participation (FFP) in state expenditures for these drugs. In general, in order for payment to be made available under section 1903 for covered outpatient drugs, manufacturers must enter into a Medicaid drug rebate agreement as set forth in section 1927(a) of the Act. Section 1927 of the Act provides specific requirements for rebate agreements, drug pricing submission and confidentiality requirements, the formulas for calculating rebate payments, and requirements for states for covered outpatient drugs.

Medicaid Supplemental Drug Rebate Agreements

The federal Omnibus Budget Reconciliation Act of 1990, section 4401 added §1927 to the Social Security Act. Section 1927 provides that states may enter separate or supplemental drug rebate agreements as long as such agreements achieve drug rebates equal to or greater than the drug rebates set forth in the Secretary's national rebate agreement with drug manufacturers, which is published at 56 F.R. 7049 (1991). Specifically, the drug rebate statute, at section 1927(a)(1) of the Social Security Act (Act), provides that "the Secretary may authorize a State to enter directly into agreements with a manufacturer." Also, section 1927(a)(4) of the Act provides that any drug rebate agreement between a state and drug manufacturers and in effect on November 5, 1990, may constitute a rebate agreement in compliance with the statute if the Centers for Medicare and Medicaid Services (CMS) determines that any such agreement "provides for rebates that are at least as large as the rebates otherwise required under this section." CMS accordingly believes that Congress intended that states that seek CMS approval under section 1927(a)(1) to enter directly into agreements with manufacturers must ensure that any such agreement will achieve drug rebates that are at least equal to the rebates set forth in the Secretary's rebate agreements with manufacturers. Currently, prescription drug manufacturers are required to enter into a rebate agreement.

Section 1927(d)(1)(A) of the Act permits states to subject any covered outpatient drug to a requirement of prior authorization as long as the state complies with the requirements set forth in section 1927(d)(5). A prior authorization program used to negotiate drug discounts for the Medicaid program is consistent with those provisions as well as the paramount purpose of the drug rebate provisions which is to reduce the costs to the Medicaid program for prescription drugs.

Summary of Proposal*Rationale and Justifications*

Supplemental rebate agreements are unique to each state. The Centers for Medicare and Medicaid Services (CMS) authorized the Delaware Division of Medicaid and Medical Assistance (DMMA)'s April 7, 2005, December 20, 2005, and December 10, 2013 versions of the "Delaware State Supplemental Rebate Agreement." These versions of the rebate agreement placed Delaware in Therapeutic Optimum Programs (TOP\$) Medicaid multi-state purchasing pool. These agreements were effective for drugs dispensed prior to July 1, 2016.

The administration of the TOP\$ Medicaid multi-state purchasing pool has since changed. This change has caused costs to increase, and made DMMA's ability to administer the drug rebate program more difficult. The Sovereign State Drug Consortium (SSDC) Medicaid multi-state purchasing pool provides states with more options and control when negotiating supplemental rebate rates, and allows for easier administration of the drug rebate program.

Purpose

To add language to the Medicaid State Plan regarding CMS's authorization for DMMA to enter into "The Sovereign States Drug Consortium (SSDC)" Medicaid multi-state purchasing pool and to provide clarification on the state's policies for the supplemental rebate program.

Summary of Proposed Changes

This SPA action addresses the need to ensure that DMMA is able to efficiently and cost effectively administer the supplemental drug rebate program.

If implemented as proposed, plan amendment will accomplish the following, effective July 1, 2016:

CMS will authorize DMMA to enter into "The Sovereign States Drug Consortium (SSDC)" Medicaid multi-State purchasing pool. The supplemental rebate agreement submitted to CMS on July 1, 2016 will amend the December 10, 2013 version of the "Delaware State Supplemental Drug Rebate Agreement" authorized under Transmittal Number SPA #15-001. CMS will authorize this amended version of the "Delaware State Supplemental Drug Rebate Agreement." This agreement and will apply to drugs paid for beginning July 1, 2016.

The agency's proposal involves no change in the definition of those eligible to receive pharmaceutical services, and the Medicaid prescribed drugs benefit available to eligible recipients remains the same. In addition, the agency's proposal involves no change to providers' current practices.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to Delaware's decision amend the state's supplemental drug rebate agreement and place Delaware in "The Sovereign State Drug Consortium (SSDC)" Medicaid multi-state purchasing pool. Comments were to be received by 4:30 p.m. on Monday May 2, 2016.

Centers for Medicare and Medicaid Services Review and Approval

The provisions of this state plan amendment (SPA) are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manuals Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

Fiscal Impact

The proposed amendment is an administrative change being implemented to more efficiently and effectively administer the State's Supplemental Drug Rebate Program. Therefore, there is no impact on the General Fund.

Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following summarized observations:

Council (GACEC) endorses the proposed amendments since the switch to the Sovereign State Drug Consortium (SSDC) Medicaid multi-state purchasing pool will provide Delaware with more options and control when negotiating supplemental rebate rates. Switching to SSDC will also apparently allow for easier administration of the drug rebate program.

Agency Response: DMMA thanks the Council for its endorsement. No change was made to the regulation as a result of these comments.

As background, drug manufacturers are required to offer rebates on drugs used in the Medicaid program. States may enter into separate or supplemental drug rebate agreements as long as they achieve drug rebates equal to or greater than the drug rebates contained in a national HHS rebate agreement. Delaware currently participates in a multi-state purchasing pool ("TOP\$") which generates rebates. However, DMMA proposes to discontinue participation in "TOP\$" and enroll in the "SSDC" pool based on the following rationale:

The administration of the TOP\$ Medicaid multi-state purchasing pool has (since) changed. This change has caused costs to increase, and made DMMA's ability to administer the drug rebate program more difficult. The Sovereign State Drug Consortium (SSDC) Medicaid multi-state purchasing pool provides states with more options and control when negotiating supplemental rebate rates, and allows for easier administration of the drug rebate program.

Enrollment in the new pool would be effective July 1, 2016. There would be no direct impact on Medicaid beneficiaries:

The agency's proposal involves no change in the definition of those eligible to receive pharmaceutical services, and the Medicaid prescribed drugs benefit available to eligible recipients remains the same. In addition, the agency's proposal involves no change to providers' current practices.

SCPD endorses the proposed regulation since the switch to a new pool is expected to provide increased flexibility and easier administration of the drug rebate program.

Agency Response: DMMA thanks the Council for its endorsement. No change was made to the regulation as a result of these comments.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2016 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding the State's Prescription Drug Supplemental Rebate Agreement, *specifically, to amend Delaware's supplemental drug rebate agreement and place Delaware in "The Sovereign State Drug Consortium (SSDC)" Medicaid multi-state purchasing pool* is adopted and shall be final effective June 11, 2016.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the April 2016 issue of the *Register* at page 884 (19 DE Reg. 884). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Prescription Drug Supplemental Rebate Agreement

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

ORDER

Long-Term Care Facility Services - Standards for Payment of Reserved Beds During Absence from Long-Term Care Facilities**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding Methods and Standards for Payment of Reserved Beds during Absence from Long-Term Care Facilities, specifically, *standards for payment of reserved beds during absence from Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Del.C. §10114 and its authority as prescribed by 31 Del.C. §512.

The Department published its notice of proposed regulation changes pursuant to 29 Del.C. §10115 in the April 2016 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 1, 2016 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding Methods and Standards for Payment of Reserved Beds during Absence from Long-Term Care Facilities, specifically, *standards for payment of reserved beds during absence from Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)*.

Statutory Authority

- §1919(c)(2)(D) of the Social Security Act, *Notice of bed hold policy and readmission*
- 42 CFR §447.40, *Payment for reserving beds in institutions*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*
- 42 CFR §483.12, *Admission, transfer and discharge rights*

Background

Under Medicaid payment regulations in 42 CFR §447.40, Federal Financial Participation (FFP) is available if a state plan includes provision for bed-reservation payments during a recipient's temporary absence from an inpatient facility, as follows:

Payments for Reserving Beds in Institutions

(a) The Medicaid agency may make payments to reserve a bed during a beneficiary's temporary absence from an inpatient facility, if-

(1) The state plan provides for such payments and specifies any limitations on the policy; and

(2) Absences for purposes other than required hospitalization (which cannot be anticipated and planned) are included in the patient's plan of care.

(b) An agency that pays for reserved beds in an inpatient facility may pay less for a reserved bed than an occupied bed if there is a cost differential between the two beds (Section 1102 of the Social Security Act).

To satisfy Medicaid nursing facility requirements for participation in §1919(c)(2)(D) (i) - (ii) of the Act and in 42 CFR §483.12(b)(1)-(2), a nursing facility must tell the residents departing for hospitalization or therapeutic leave about the state's bed-reservation payment policy. This information must be in writing and must specify the number of days the state Medicaid covers, if any, and the nursing facility's policies regarding bed-reservation periods.

If a Medicaid eligible resident's absence from the nursing facility exceeds the bed-reservation period in the state plan, §1919(c)(2)(D)(iii) of the Act and 42 CFR §483.12(b)(3) guarantee the resident readmission to the

facility immediately upon the first availability of a bed in a semi-private room in the facility if, at the time of admission, the resident requires the services provided by the facility.

In Delaware, if a Medicaid recipient is hospitalized for a short period of time and is expected to return to the facility, Medicaid reimbursement is available for no more than seven (7) days within any thirty-day period. The thirty-day count begins with the first day of hospitalization. If payments are suspended because recipient remains hospitalized more than seven (7) days and the thirty-day count expires, a new thirty-day count starts with readmission to the long-term care facility.

Summary of Proposal

Rationale and Justifications

The Medicaid State Plan and the Division of Social Services Manual (DSSM) requires the Delaware Medical Assistance Program (DMAP) to make payments to long-term care (LTC) facilities to ensure a bed is reserved for a Medicaid recipient who is temporarily absent from the LTC facility due to hospitalization or leave of absence. Currently, bed-reservation payments are limited to seven (7) days per hospitalization in any thirty-day period.

DMMA recognizes the unique role that the Mary Campbell Center and Stockley Center, both of which are Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID), fulfill in serving a very vulnerable population. Given the distinct challenges faced by these LTC facilities in serving this population, it was determined that the additional protection of an extended bed-reservation payment period of fourteen (14) days is necessary in order to sustain services for this population of recipients.

Purpose

This amendment to the State Plan and DSSM adds a provision that allows DMAP to extend the bed-reservation payments from seven (7) days to fourteen (14) days in any thirty-day period for individuals residing in an ICF/IID long-term care facility.

Summary of Proposed Changes

Effective for services provided on and after July 1, 2016 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 4.19-C of the Medicaid State Plan to add a provision to the long-term care bed-reservation reimbursement policy to make payments for reserving beds in ICF/IID for fourteen (14) days per hospitalization for acute conditions in any thirty-day period.

Also effective for services provided on and after July 1, 2016, DMMA proposes to make changes to policy section 20650, Temporary Absence from Nursing Facility for Hospitalization, and its sub-sections of the Division of Social Services Manual (DSSM) to reflect the proposed changes to the State Plan.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the coverage and payment methodology for reservation of beds in ICF/IID long-term care facilities. Comments were to be received by 4:30 p.m. on Monday May 2, 2016.

CMS Review and Approval

The provisions of this draft state plan amendment (SPA) are subject to the Centers for Medicare and Medicaid Services (CMS) review and approval. The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manual Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

Cost/Budgetary Impact

The following represents the potential increase in expenditures if bed-reservation payments for individuals residing in an ICF/IID are increased from seven (7) days to fourteen (14) days in any thirty-day period effective July 1, 2016.

The following fiscal impact is projected:

	Federal Fiscal Year 2016 ¹	Federal Fiscal Year 2017
General (State) Funds	\$6,250	\$25,000
Federal Funds	\$7,587	\$29,585

1. Represents July - September 2016

Summary of Comments Received with Agency Response

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

As background, a CMS regulation (42 CFR §447.40) allows states at state option, to make "bed hold" payments to a long-term care facility during a resident's temporary absence hospitalization or other specified reasons. DMMA currently implements this option but plans to modify it for residents of an ICF/IID. In a nutshell, the normally paid 7-day bed-hold period per hospitalization would be extended to 14 days for Delaware's only ICF/IIDs - Stockley Center and Mary Campbell Center. The expected fiscal impact for FFY 17 is \$25,000 in state funds and \$29,585 in federal funds.

GACEC and SCPD endorse the extended paid "bed-hold" period for ICF/IIDs but has the following observations and recommendations.

Agency Response: DMMA thanks the Council for its endorsement and offers the following responses to your observations and recommendations.

First, on p. 889, the reference to 42 CFR §440.40 is incorrect. The reference should be to 42 CFR §447.40.

Agency Response: DMMA agrees that the reference citation was entered incorrectly under the Statutory Authority listing in the Summary of Proposal, despite being listed correctly in the Background. The correct citation will be listed in both places when the final regulation is published.

Second, consistent with 42 CFR §447.40, DMMA reaffirms the current policy of allowing up to 18 days per calendar year of "bed-hold" payments if included in the resident's plan of care. It would be informative to include the following clarifying sentence after Par. "2" on p. 891: "This may include absences included in a plan of care due to transfers to a 'specialized treatment facility' consistent with Title 16 **Del.C.** §1121(18)." This would be instructive to providers and residents seeking to reconcile Medicaid payment standards and the overlapping State "bed -hold" statute. For similar reasons, the same sentence could be added to §20650.2.1 on p. 892.

Agency Response: DMMA thanks the Council for its comment. However, no change was made as a result of this comment.

Third, waiver of the 18 day paid leave of absence limit can be obtained if the LTC facility applies and its medical director confirms medical necessity. This may be unduly limiting. It would be preferable to allow either the LTC facility or the resident [supported by his personal attending physician [16 **Del.C.** §1121(21)]] to apply for a waiver since a resident's view may be different than the facility's view. CMS recognizes the divergence of interest in the context of transfers and discharges. See 42 C.F.R. §483.12(a)(3)(i); attached CMS Surveyor Guidance F201-203; and attached CMS proposed regulations, 80 Fed Reg. 42247-42249, 42254-42255. For example, the facility may prefer that the resident or resident's family "private pay" for the period in excess of 18 days since that results in higher payment.

Agency Response: DMMA thanks the Council for its comment. However, no change was made as a result of this comment.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2016 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding Methods and Standards for Payment of Reserved Beds during Absence from Long-Term Care Facilities, specifically, *standards for payment of reserved beds during absence from Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)*, is adopted and shall be final effective June 11, 2016.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the April 2016 issue of the *Register* at page 888 (19 DE Reg. 888). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[Long-Term Care Facility Services - Standards for Payment of Reserved Beds During Absence](#)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

ORDER

Long-Term Care Facilities - Post-Eligibility Treatment of Institutionalized Individuals Personal Needs Allowance

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the Post-Eligibility Treatment of Institutionalized Individuals, specifically, *standards for payment of personal needs allowance for individuals in from long-term care facilities*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del.C.** §10115 in the April 2016 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 2, 2016 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding Post-Eligibility Treatment of Institutionalized Individuals, specifically; *standards for payment of personal needs allowance for individuals residing in long-term care facilities*.

Statutory Authority

- §1902(a)(50), (q) of the Social Security Act, *A State Plan for medical assistance must*
- §1924(d)(1) of the Social Security Act, *Allowances to be offset from income of institutionalized spouse*
- 42 CFR §435.725, *Post-eligibility treatment of income of institutionalized individuals in SSI States: Application of patient income to the cost of care*
- 42 CFR §435.733, *Post-eligibility treatment of income of institutionalized individuals in States using more restrictive requirements than SSI: Application of patient income to the cost of care*

- 42 CFR §435.832, *Post-eligibility treatment of income of institutionalized individuals: Application of patient income to the cost of care*

Background

Under §1902(a)(14)(I) of the Social Security Act medical assistance recipients that are institutionalized in long-term care facilities are required to apply their income toward the cost of institutional care. The individual must contribute income to pay for institutional services, deducting only certain allowable amounts, such as a personal needs allowance (PNA). A PNA is defined under Medicaid regulations in 42 CFR 435.725(c)(1) as follows:

(a) Required deductions. In reducing its payment to the institution, the agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in this process.

(1) Personal needs allowance. A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. This protected personal needs allowance must be at least--

a. \$30 a month for an aged, blind, or disabled individual, including a child applying for Medicaid on the basis of blindness or disability;

b. \$60 a month for an institutionalized couple if both spouses are aged, blind, or disabled and their income is considered available to each other in determining eligibility; and

c. For other individuals, a reasonable amount set by the agency, based on a reasonable difference in their personal needs from those of the aged, blind, and disabled.

In reducing its payment to the institution, the agency must deduct a personal needs allowance. A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. This protected personal needs allowance must be at least \$30 a month for an aged, blind, or disabled individual; \$60 a month for an institutionalized couple if both spouses are aged, blind, or disabled and their income is considered available to each other in determining eligibility; and for other individuals, a reasonable amount set by the agency, based on a reasonable difference in their personal needs from those of the aged, blind, and disabled.

Summary of Proposal

Rationale and Justifications

State Plan provisions require the Delaware Medical Assistance Program (DMAP) to provide a personal needs allowance (PNA) to Medicaid recipients residing in long-term care facilities. This PNA is intended to provide for clothing and other personal needs. The current PNA is \$44/month for individuals and \$88/month for couples and was set in 2002. DMMA recognizes that the cost-of-living has increased since 2002 and proposes to increase the PNA to offset some of the increased costs of personal needs for recipients.

Purpose

This amendment to the State Plan and DSSM adds a provision that allows DMAP to increase the personal needs allowance for individuals residing in long-term care facilities from \$44/month to \$50/month for individuals, and from \$88/month to \$100/month for couples.

Summary of Proposed Changes

Effective for services provided on and after July 1, 2016, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DMMA) proposes to amend Attachment 2.6-A, Page 4 and Page 4 Addendum of the Medicaid State Plan provisions to increase the Personal Needs Allowance for individuals residing in long-term care facilities from \$44/month to \$50/month for individuals, and from \$88/month to \$100/month for couples.

Also effective for services provided on and after July 1, 2016, DMMA proposes to make changes to policy sections 20620 Patient Pay Amount Deductions, 20620.1 Personal Needs, and 20995.1 Post-Eligibility Deductions, and applicable sub-sections of the Division of Social Services Manual (DSSM) to reflect the proposed changes to the State Plan.

Public Notice

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives

public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the agency's decision to increase the personal needs allowance for individuals institutionalized in long-term care facilities. Comments were to be received by 4:30 p.m. on Monday May 2, 2016.

CMS Review and Approval

The provisions of this draft state plan amendment (SPA) are subject to the Centers for Medicare and Medicaid Services (CMS) review and approval. The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manual Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

Fiscal Impact

The following represents the potential increase in expenditures if the monthly Personal Needs Allowance for Medicaid recipients residing in long-term care facilities is increased from \$44 to \$50 for individuals and \$88 to \$100 for couples.

The following fiscal impact is projected:

	Federal Fiscal Year 2016 (1)	Federal Fiscal Year 2017
General (State) funds	\$ 15,125	\$ 60,500
Federal funds	\$ 18,360	\$ 71,596

(1) Represents July - September 2016 only

Summary of Comments Received with Agency Response

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

As background, under CMS regulations, Medicaid-funded individuals residing in long-term care facilities are generally required to contribute to costs of institutional services after deducting certain allowable amounts. At 894, quoting 42 CFR §435.725. One deduction is a "personal needs allowance (PNA)" which, for "aged, blind, or disabled" persons must be at least \$30/month for individuals and \$60/month for couples. The purpose of the PNA is to provide an "allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution".

The current PNA established by DMMA is \$44/month for individuals and \$88/month for couples. These amounts have not changed in 14 years, i.e., since 2002. The Division proposes to increase the PNA from \$44/month to \$50/month for individuals and from \$88/month to \$100/month for couples. The change would be effective July 1, 2016. The change is "subsidized" by federal funds. For example, in FFY17, the projected fiscal impact of the change is \$71,596 in federal funds and \$60,500 in State funds.

GACEC and SCPD have the following observations.

First, DMMA could consider a larger increase in the PNA. Consistent with the attachment, \$44 in 2002 equates to \$57.99 in 2016 based on inflation. Adopting a \$50 rate reflects an increase of less than half the inflation rate. Moreover, since the state infrequently changes the rate, adopting an overly restrained benchmark in 2016 which will remain in effect for many years will accentuate the disparity. DMMA could consider adopting a \$58 rate for individuals and a \$116 rate for couples which would fully account for the inflation rate. This would ostensibly raise the State fiscal impact from \$60,500 to \$141,167 while increasing the federal contribution from \$71,596 to \$167,057.

Agency Response: DMMA thanks the Council for its comment. However, no change was made as a result of this comment.

Second, on p. 896, DMMA may wish to consider substituting "ICF/IID" for ICF/MR. See CMS attachment, Title 29 **Del.C.** §608, and DMMA references to ICF/IID at 19 DE Reg. 888, 889 and 892.

Agency Response: DMMA agrees with the Council's recommendation. The reference has been changed from ICF/MR to ICF/IID.

Third, on p. 897, the following reference should be reconsidered in consultation with DDDS:

If the recipient regularly attends a rehab/educational program off the grounds of his ~~nursing~~ or her long-term care facility, including employment for the purpose of rehabilitation in a sheltered workshop ~~off the grounds of the facility~~, \$50.00 per month ~~(rather than \$44)~~ will be protected;...

The reference is somewhat archaic given Title 19 **Del.C.** §§740-747 (Employment First Act) and could be interpreted as excluding PNA eligibility to participants in supported employment as well as day habilitation programs. It may violate public policy to limit PNA to participants (including group home and foster home residents) in sheltered workshops to the exclusion of participants in supported employment.

Agency Response: DMMA thanks the Council for its comment. However, no change was made as a result of this comment.

Fourth, on p. 897, there are two references to an SGA limit of \$700. That was the SGA limit in 1999-2000. See attachment. There is also an incorrect reference to "Department of Social Services (DSS)" rather than Department of Health & Social Services and references to "DSS" that ostensibly should be "DMMA".

Agency Response: DMMA agrees with the Council's suggested revisions for this section of the eligibility policy. The following changes have been made and will be included in the final draft of this policy:

20620.1.3.2 If monthly earnings average more than the current SGA amount in a calendar year, this is considered SGA and the Division of Medicaid and Medical Assistance (DMMA) can allow a personal needs allowance of up to the AFC rate.

20620.1.3.3 If earnings average less than \$300 a month in a calendar year, this is not ordinarily considered SGA and DMMA can allow the \$50 personal needs allowance.

20620.1.3.4 If average earnings are between \$300 and the current SGA amount, DMMA must consider other factors to determine whether or not the work constitutes SGA. Other factors include considering if the work is comparable to persons without disabilities in the community performing similar jobs.

Fifth, on p. 897, the reference to "unimpaired people" should be reconsidered. See Title 29 **Del.C.** §608.

Agency Response: DMMA agrees with the Council's suggestion to reconsider this terminology. The following change has been made and to the regulation:

20620.1.3.4 If average earnings are between \$300 and the current SGA amount, DMMA must consider other factors to determine whether or not the work constitutes SGA. Other factors include considering if the work is comparable to persons without disabilities in the community performing similar jobs.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2016 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the Post-Eligibility Treatment of Institutionalized Individuals, specifically, *standards for payment of personal needs allowance for individuals in from long-term care facilities*, is adopted and shall be final effective June 11, 2016.

Rita M. Landgraf, Secretary, DHSS

(Break in Continuity of Sections)

DMMA FINAL ORDER #16-013b
REVISIONS:

ATTACHMENT 2.6-A
Page 4 Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE

ELIGIBILITY CONDITIONS AND REQUIREMENTS

42 CFR 435.725; 43 CFR 435.733; 42 CFR 435.832

~~B.1.a. For the following individuals with a greater need~~

B. Post-Eligibility Treatment of Institutionalized Individuals (continued)

For the following individuals with a greater need (continued)

- d. \$50/month for NF and ICF/~~[MR IID]~~ residents engaging in frequent and regular rehabilitation out-of-facility activities.

(Break in Continuity Within Section)

DMMA FINAL ORDER #16-013c
REVISION:

(Break in Continuity of Sections)

20620.1 Personal Needs Allowance

- a) ~~20620.1.1~~ ~~\$44.00~~ \$50.00 per month of available income is to be protected for the Medicaid recipients recipient's direct personal needs; or
- b) ~~20620.1.2~~ If the recipient regularly attends a rehab/educational program off the grounds of his ~~nursing or her~~ long-term care facility, including employment for the purpose of rehabilitation in a sheltered workshop ~~off the grounds of the facility~~, \$50.00 per month (~~rather than \$44~~) will be protected; or
- c) ~~20620.1.3~~ For ~~nursing~~ long-term care facility residents who are participating in substantial gainful activity (SGA) (20 CFR 416.971), the following amounts, not to exceed the Adult Foster Care rate will be deducted from gross earned income:

(Break in Continuity Within Section)

~~20620.1.3.2~~ If ~~[monthly]~~ earnings average more than ~~[\$700 a month the current SGA amount]~~ in a calendar year, this is considered SGA and ~~DSS [Department of Social Services (DSS) the Division of Medical Assistance (DMMA)]~~ can allow a personal needs allowance of up to the AFC rate.

~~20620.1.3.3~~ If earnings average less than \$300 a month in a calendar year, this is not ordinarily considered SGA and ~~[DSS DMMA]~~ can allow the ~~\$44 or~~ \$50 personal needs allowance.

~~20620.1.3.4~~ If average earnings are between \$300 and ~~[\$700 the current SGA amount]~~, ~~[DSS DMMA]~~ must consider other factors to determine whether or not the work constitutes SGA. Other factors include considering if the work is comparable to ~~[unimpaired people persons without disabilities]~~ in the community performing similar jobs.

*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2016 issue of the *Register* at page 893 (19 DE Reg. 893). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

Post-Eligibility Treatment of Institutionalized Individuals Personal Needs Allowance

FINAL REGULATIONS

DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS OFFICE OF WORKERS' COMPENSATION

Statutory Authority: 19 Delaware Code, Section 2322B(3) (19 Del.C. §2322B(3))
19 DE Admin. Code 1341

ORDER

1341 Workers' Compensation Regulations

Pursuant to 29 Del.C. §10113, the Secretary of the Department of Labor issues this Order adopting amendments to the Workers' Compensation Health Care Payment Rates for Physicians, Other Qualified Health Care Professionals, Hospitals and Hospital Outpatient Facilities, as well as Ambulatory Surgery Centers.

On July 15, 2014, the Governor signed HB373, which mandated that the Workers' Compensation Oversight Panel establish a fee schedule that shall result in reductions in aggregate workers compensation medical expenses over a three year period beginning January 31, 2015. Effective June 11, 2016, these changes to subsections 1.4, 4.4, 4.7, 4.9, 4.11, 4.12, 4.26, 4.27, and 4.29 of 19 DE Admin. Code 1341 align the regulations with the statutory requirement in 19 Del.C. §2322B(3)(b):

1. Removed the 20% reduction that was in line with only the medical expense reductions planned for the January 31, 2015 fee schedule and allowed the further reductions planned for the 2016 and 2017 fee schedules.

Pursuant to 29 Del.C. §10113(4):

"(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally:

... (4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors;"

DEPARTMENT OF LABOR

Patrice Gilliam-Johnson
Secretary of Labor

1341 Workers' Compensation Regulations

1.0 Purpose and Scope

(Break in Continuity Within Section)

1.4 Section 2322B(5), Chapter 23, Title 19, **Delaware Code** authorizes the Workers' Compensation Oversight Panel to establish the amount of reimbursement for a procedure, treatment or service to be 20% less than a percentage reduction from 85% of the actual charge (~~68% of the actual charge~~), if a specific fee is not set forth in the Fee Schedule Amounts.

(Break in Continuity of Sections)

4.0 Workers' Compensation Health Care Payment Rates for Physicians, Other Qualified Health Care Professionals, Hospitals and Hospital Outpatient Facilities, as well as Ambulatory Surgery Centers (the "Fee Schedule"). Instructions and Guidelines

(Break in Continuity Within Section)

4.4 Physician/Health Care Provider Services

(Break in Continuity Within Section)

4.4.5 Whenever the health care payment system does not set a specific fee for a procedure, treatment or service in the schedule, the amount of reimbursement shall be 20% less than a percentage reduction from 85% of the actual charge (~~68% of the actual charge~~).

(Break in Continuity Within Section)

4.7 Dental Services

- 4.7.1 Whenever the health care payment system does not set a specific fee for a dental treatment, procedure or service in the schedule, the amount of reimbursement shall be ~~20% less than a~~ percentage reduction from 85% of the actual charge (~~68% of the actual charge~~).

(Break in Continuity Within Section)

4.9 Inpatient Hospital

(Break in Continuity Within Section)

- 4.9.3 MS-DRGs and discharge date shall be used to determine the maximum allowable reimbursement for Inpatient hospital services. The dollar amount shall be calculated by using the CMS MS-DRG 2015 relative weights multiplied by a base rate of an appropriately calculated conversion factor as published on the Department of Labor web site. The maximum allowable reimbursement is payment in full. MS-DRGs not covered in this schedule shall be reimbursed at ~~20% less than a~~ percentage reduction from 75.63% of the actual charge (~~60% of the actual charge~~).

(Break in Continuity Within Section)

4.11 Independently Operated Diagnostic Testing Facility

(Break in Continuity Within Section)

- 4.11.2 In the event that the professional services and HCPCS Level II health care payment system is inapplicable, the fee for reimbursement of independent diagnostic testing facility services shall be ~~20% less than a~~ percentage reduction from 85% of the actual charge (~~68% of the actual charge~~).

(Break in Continuity Within Section)

4.12 Pathology

(Break in Continuity Within Section)

- 4.12.2 Whenever the health care payment system does not set forth a specific fee for a pathology service or procedure in the schedule, the amount of reimbursement shall be ~~20% less than a~~ percentage reduction from 85% of the actual charge (~~68% of the actual charge~~).

(Break in Continuity Within Section)

4.26 Radiology

4.26.1 Payment Ground Rules for Diagnostic and Therapeutic Radiological Services

4.26.1.1 General Guidelines

(Break in Continuity Within Section)

- 4.26.1.1.2 Whenever the health care payment system does not set a specific fee for a procedure, treatment or service in the schedule, the amount of reimbursement shall be ~~20% less than a~~ percentage reduction from 85% of the actual charge (~~68% of the actual charge~~).

(Break in Continuity Within Section)

4.27 Laboratory and Pathology

4.27.1 Payment Ground Rules for Pathology and Laboratory Services

4.27.1.1 General Guidelines

(Break in Continuity Within Section)

- 4.27.1.1.2 Whenever the health care payment system does not set a specific fee for a procedure, treatment or service in the schedule, the amount of reimbursement shall be ~~20% less than a~~ percentage reduction from 85% of the actual charge (~~68% of the actual charge~~).

(Break in Continuity Within Section)

4.29 Durable Medical Equipment and Supplies

- 4.29.1 Whenever the health care payment system does not set a specific fee for a procedure, treatment or service in the schedule, the amount of reimbursement shall be ~~20% less than a~~ percentage reduction from 85% of the actual charge (~~68% of the actual charge~~).

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

1341 Workers' Compensation Regulations

**DIVISION OF INDUSTRIAL AFFAIRS
OFFICE OF WORKERS' COMPENSATION**

Statutory Authority: 19 Delaware Code, Section 2322B(3) (19 **Del.C.** §2322B(3))
19 **DE Admin. Code** 1341

ORDER

1341 Workers' Compensation Regulations

Pursuant to 29 **Del.C.** §10113, the Secretary of the Department of Labor issues this Order adopting amendments to the Health Care Provider Certification and the Workers' Compensation Health Care Payment Rates for Physicians, Other Qualified Health Care Professionals, Hospitals and Hospital Outpatient Facilities, as well as Ambulatory Surgery Centers.

On January 17, 2007, the Governor signed SB1, which established a certification process for health care providers.

On July 14, 2014, the Governor signed HB373, which mandated that the Workers' Compensation Oversight Panel establish a fee schedule. Effective June 11, 2016, these changes to subsections 3.2, 4.18, and 4.22 of 19 **DE Admin. Code** 1341 correct technical errors in the regulations:

1. Correct the address to which completed Provider Certification applications are to be mailed.
2. Correct the manner in which the Accreditation Association for Ambulatory Health Care is referenced.

Pursuant to 29 **Del.C.** §10113(4):

"(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally:

... (4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors;"

DEPARTMENT OF LABOR

Patrice Gilliam-Johnson
Secretary of Labor

**1341 Workers' Compensation Regulations
(Break in Continuity of Sections)**

3.0 Health Care Provider Certification

(Break in Continuity Within Section)

3.2 Completed Certification should be mailed to:

~~Ms. Donna Forrest~~

State of Delaware Department of Labor

Office of Workers' Compensation

4425 N. Market Street

Wilmington, DE ~~19809-9954~~ 19802

(Break in Continuity Within Section)

4.0 Workers' Compensation Health Care Payment Rates for Physicians, Other Qualified Health Care Professionals, Hospitals and Hospital Outpatient Facilities, as well as Ambulatory Surgery Centers (the "Fee Schedule"). Instructions and Guidelines

(Break in Continuity Within Section)

4.18 General Rules

(Break in Continuity Within Section)

4.18.2 Injections

(Break in Continuity Within Section)

- 4.18.2.6 Billing for intravenous conscious sedation during a spinal injection procedure remains separately compensable, as long as that service is provided by a certified registered nurse anesthetist, anesthesiologist or a physician, who has additional formal training and is certified in conscious sedation as well as Advanced Cardiac Life Support (ACLS) certified. The service must also be performed in a facility ~~licensed~~ certified by Medicare or accredited by Accreditation Association for Ambulatory Health Care (AAAHC). Sedation directed by the physician performing the procedure is not compensable.

(Break in Continuity Within Section)

4.22 Hospital Outpatient and Ambulatory Surgery Centers

4.22.1 Definitions

- 4.22.1.1 For purposes of this section of the Fee Schedule, "ambulatory surgery center" means an establishment with an organized medical staff of physicians; with permanent facilities that are equipped and operated primarily for the purpose of performing surgical procedures; with continuous physicians and registered nurses on site when the facility is open. An ambulatory surgery center may be a freestanding facility or may be attached to a hospital facility. For purposes of Workers' Compensation reimbursement to ASCs, the facility must be an approved Medicare ASC, or ~~certified~~ accredited by Accreditation Association for Ambulatory Health Care, Inc. (AAAHC).

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

1341 Workers' Compensation Regulations

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

2700 BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS

Statutory Authority: 24 Delaware Code, Section 2706(a)(1) (24 Del.C. §2706(a)(1))

24 DE Admin. Code 2700

ORDER

2700 Board of Registration for Professional Land Surveyors

On January 1, 2016, the Delaware Board of Professional Land Surveyors published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 19, Issue 7. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 21, 2016 at a regularly scheduled meeting of the Board of Professional Land Surveyors to receive verbal comments regarding the Board's proposed amendments to its regulations.

FINAL REGULATIONS

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1- Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2- Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony presented at the public hearing on January 21, 2016. No written comments were received by the Board.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the written public comment periods, or at the public hearing.
3. Pursuant to 24 **Del.C.** §2706(a)(1), the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §2706(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the *Delaware Register of Regulations* on January 1, 2016. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 28th day of April, 2016.

Delaware Board of Professional Land Surveyors

James Bielicki, PLS

Charles Adams, PLS

Kelly Katz, PLS

Franco R. Bellafante, PLS

Rhonda West

Carla Cassell-Carter (absent)

***Please note that no changes were made to the regulation as originally proposed and published in the January 2016 issue of the *Register* at page 589 (19 DE Reg. 589). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2700 Board of Registration for Professional Land Surveyors

DIVISION OF PROFESSIONAL REGULATION

3600 BOARD OF GEOLOGISTS

Statutory Authority: 24 Delaware Code, Section 3606(a)(1) (24 **Del.C.** §3606(a)(1))
24 **DE Admin. Code** 3600

ORDER

3600 Board of Geologists

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 1, 2016 at a scheduled meeting of the Delaware Board of Geologists ("Board") to receive comments regarding the Board's proposed revisions to its rules and regulations.

Rule 2.1.1.3 has been revised to include a new requirement that two of the five professional references submitted by applicants must be dated within the two year period preceding submission of the application. Rule 3.0, pertaining to Seal Requirements, has been re-written. Licensees will be required to comply with the new seal requirements no later than September 30, 2018. The Board's continuing education rules have been updated for greater clarity for licensees. Rule 5.0 is amended to state that licensure renewal must be accomplished on-line. Finally, a new Rule 7.4 is added to specify that an applicant who fails to pass either part of the ASBOG exam within two years shall be required to re-apply as a new applicant.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 19, Issue 9, on March 1, 2016. Notice of the April 1, 2016 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was April 16, 2016, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on May 13, 2016.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Board Exhibit 1: *News Journal* Affidavit of Publication.

Board Exhibit 2: *Delaware State News* Affidavit of Publication.

There was no verbal testimony given at the public hearing on April 1, 2016. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day second public comment period.

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** §3606(a)(1), the Board has the statutory authority to promulgate rules and regulations.

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board's rules and regulations. There was no verbal testimony at the hearing and no written comments were submitted.

Having received no public comments, the Board finds no reason to amend the rules and regulations as proposed.

Decision and Effective Date

The Board finds that the rules and regulations shall be adopted as final in the form proposed. These changes will become effective ten days following publication of this Final Order in the *Delaware Register of Regulations*.

Text and Citation

The exact text of the rules and regulations, as amended, is attached to this order as Exhibit A.

IT IS SO ORDERED this 13th day of May, 2016 by the Delaware Board of Geologists.

Douglas Rambo, Professional Member, President	Maureen LaFate, Public Member
William "Sandy" Schenck, Professional Member, Vice President	Kenneth Dryden, Public Member (absent)
Steven Smailer, Professional Member, Secretary	Judith Nicholas, Public Member
David Reinhold, Professional Member	

***Please note that no changes were made to the regulation as originally proposed and published in the March 2016 issue of the *Register* at page 827 (19 DE Reg. 827). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3600 Board of Geologists

FINAL REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

5200 BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Statutory Authority: 24 Delaware Code, Section 5206(1) (24 **Del.C.** §5206(1))
24 **DE Admin. Code** 5200

ORDER

5200 Board of Examiners of Nursing Home Administrators

On December 1, 2015, the Delaware Board of Nursing Home Administrators published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 19, Issue 6. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on March 8, 2016 at a regularly scheduled meeting of the Board of Nursing Home Administrators to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1 - Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2 - Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony presented at the public hearing. No written comments were received by the Board.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments on the proposed amendments to the Board's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Board during the written public comment periods.
3. Pursuant to 24 **Del.C.** §5206(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having reviewed no public comments, the Board finds no reason not to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §5206(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on December 1, 2015. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 10th day of May, 2016.

DELAWARE BOARD OF NURSING HOME ADMINISTRATORS

Michael Salitsky, N.H.A., President

Jane Ketterman, N.H.A., Secretary

Gwendolyn Benton

Timothy Bane

Eleanor Allione

E. Ray Quillen, N.H.A., Vice President

Sandra Dole (absent)

Jennifer Vaughn (absent)

Cecilia Jones

FINAL REGULATIONS

1107

*Please note that no changes were made to the regulation as originally proposed and published in the December 2015 issue of the *Register* at page 479 (19 DE Reg. 479). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

5200 Board of Examiners of Nursing Home Administrators

DELAWARE RIVER BASIN COMMISSION**Proposed Amendments to the Rules of Practice and Procedure Concerning Regulatory Program Fees and to the Basin Regulations - Water Supply Charges Concerning Rates****PUBLIC NOTICE**

The Commission will hold a public hearing to receive comments on proposed amendments to the Rules of Practice and Procedure to adopt a new project review fee structure and to the Basin Regulations - Water Supply Charges to provide for automatic inflation adjustments.

The public hearing will be held at 1:00 P.M. on Wednesday, July 27, 2016. The hearing will continue until all those wishing to testify have had an opportunity to do so. Written comments will be accepted and must be received by 5:00 P.M. on Friday, August 12, 2016.

The public hearing will be held at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please use the driving directions posted on the Commission's website.

Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at 609-883-9500, ext. 224. Written comments may be submitted as follows: If by email, to paula.schmitt@drbc.state.nj.us; if by fax, to Commission Secretary at 609-883-9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; and if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. Comments also may be delivered by hand at any time during the Commission's regular office hours (Monday through Friday, 8:30 A.M. through 5:00 P.M. except on national holidays) until the close of the comment period at 5:00 P.M. on Friday, August 12, 2016. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and "Fees Rulemaking" in the subject line.

An FAQ document explaining this proposal in further detail is available on the Commission's website, www.drbc.net. For queries about the rulemaking process, please contact Pamela Bush at 609-477-7203.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, June 16, 2016 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****Long-Term Care Facilities - Eligibility Determinations and Post-Eligibility Treatment; Undue Hardships****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance proposes to amend the Delaware Social Services Manual (DSSM) by modifying provisions regarding long-term care eligibility, specifically, to modify language regarding undue hardship provisions to align with current federal regulations and DMMA policy.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Kimberly Xavier by email at Kimberly.Xavier@state.de.us; by mail at Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, or by fax to 302-255-4425 by July 1, 2016. Please identify in the subject line: Long-Term Care - Undue Hardship Provision.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF PUBLIC HEALTH
4202 Control of Communicable and Other Disease Conditions
PUBLIC NOTICE

The Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Control of Communicable and Other Disease Conditions (4202). The purpose of the amendments is to provide for complete and accurate reporting of information related to Zika illness in Delaware. On June 1, 2016, DPH plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the June 1, 2016 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the DPH at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday July 8, 2016, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF AIR QUALITY
1101 Definitions and Administrative Principles
PUBLIC NOTICE

Delaware's air quality does not meet the federal health based standard for the pollutant ozone. Ozone is formed by reaction of nitrogen oxides (NO_x) and VOC in the atmosphere, in the presence of heat and sunlight. Ozone concentrations are reduced by reducing NO_x and VOC emissions. This action will add the following eight compounds to the list of compounds excluded from Delaware's regulatory definition of VOC on the basis that the Environmental Protection Agency (EPA) has determined that these compounds make a negligible contribution to ground level ozone formation: HFO-1234ze, HFE-134, HFE-236ca2, HFE-338pcc13, H-Galden1040x, trans 1-chloro-3,3,3-trifluoroprop-1-ene, HFO-1234yf, and 2-amino-2-methyl-1-propanol (AMP). Also, the recordkeeping, emission reporting, photochemical dispersion modeling and inventory requirements that were required for the exempt compound t-butyl acetate (TBAC) will be removed as shown in a recent federal action.

The hearing for this action is scheduled for June 22, 2016 at 6 PM in the DNREC Auditorium in the Richardson & Robbins Building located at 89 Kings Highway in Dover Delaware. Statements or testimony may be presented, orally or in writing, at the public hearing. The hearing record for the proposed revision to the VOC definition in **7 DE Admin Code 1101** will be open until July 7, 2016. Interested parties may submit comments in writing to David Fees by email to david.fees@state.de.us or by USPS to: David Fees, Delaware DNREC, Division of Air Quality, State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904.

DIVISION OF WATER
GROUND WATER DISCHARGES SECTION
7102 Regulations Governing Underground Injection Control
PUBLIC NOTICE

The purpose of the proposed revisions is to bring the regulations into compliance with current federal

requirements, as determined by the United States Environmental Protection Agency (EPA). The EPA issued the *Revisions to the Underground Injection Control (UIC) Regulations for Class V Injection Wells*, effective April 2000 and December 2011. With this, the State of Delaware *Regulations Governing Underground Injection Control* is to be amended. The revised State regulations will also expand the existing regulations to include additional requirements for multiple water management activities.

The hearing record on the proposed changes to State of Delaware *Regulations Governing Underground Injection Control* will be open June 1, 2016. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on July 14, 2016 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**DIVISION OF STATE POLICE****2400 BOARD OF EXAMINERS OF CONSTABLES****PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 **Del.C.** Ch. 27 proposes to adopt Rules: 4.0 - Badges & Vehicle Markings - requires all badges and vehicle markings to be approved by the Board. If you wish to view this adoption, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by July 1, 2016, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold a meeting on Thursday, July 28, 2016, Tatnall Building, 150 Martin L. King, Jr. Boulevard South, Room 112, Dover, DE.

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****300 BOARD OF ARCHITECTS****PUBLIC NOTICE**

The Delaware Board of Architects, pursuant to 24 **Del.C.** §306(a)(1), proposes to revise its regulations. The proposed regulatory overhaul seeks to bring the regulations into conformity with current law and remove outdated and inconsistent provisions. For example, the proposed changes eliminate unnecessary definitions; update the regulations pertaining to reciprocity and training in order to be consistent with recent changes in the statute pertaining to the same; changes the date of renewal from July 31st to January 31st; updates the language on the seal; and adds several drug crimes to the list of crimes related to the practice of architecture.

The Board will hold a public hearing on the proposed regulation change on July 6, 2016 at 1:30 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrative Specialist of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until July 21, 2016 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION**1900 BOARD OF NURSING****PUBLIC NOTICE**

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise regulations 8.0, et. seq. The proposed changes update the regulations to reflect the current terminology from advanced practice nurse to advanced practice registered nurse and seek to bring the nursing regulations into line with a recent statutory

change addressing advanced practice registered nurses collaborative agreements, prescriptive authority, and independent.

The Board will hold a public hearing on the proposed regulation change on July 13, 2016 at 9:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Peggy Mack, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until July 28, 2016 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2006(a)(1), the Delaware Board of Occupational Therapy Practice has proposed revisions to its rules and regulations. The rules pertaining to renewal of an expired license are amended and a regulation addressing telehealth is added.

A public hearing will be held on July 20, 2016 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Occupational Therapy Practice, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
3800 BOARD OF DIETETICS/NUTRITION
PUBLIC NOTICE

The Delaware Board of Dietetics/Nutrition, pursuant to 24 **Del.C.** §3805(1), proposes to revise its regulations. The proposed amendments to the regulations seek to clarify and provide more detailed information regarding the use of telehealth for the provision of dietetics and nutrition services.

The Board will hold a public hearing on the proposed rule change on August 12, 2016 at 1:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator of the Delaware Board of Dietetics/Nutrition, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until August 27, 2016.
